TRANSCRIPT OF RECORD.

UPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 548.

E M. TRAVIS, AS COMPTROLLER OF THE STATE OF NEW YORK, APPELLANT,

vs.

E YALE & TOWNE MANUFACTURING COMPANY.

FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 18, 1919.

(27,308)

(27,303)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

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EUGENE M. TRAVIS, AS COMPTROLLER OF THE STATE OF NEW YORK, APPELLANT,

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 26, 1919.

District Court of the United States for the Southern District of New York.

The Yale & Towne Manufacturing Company, Complainant,

vs.

Eugene M. Travis, Comptroller of the State of New York, Defendant.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, Sitting as a Court of Equity:

The Yale & Towne Manufacturing Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and a citizen of said State of Connecticut, brings this its bill of complaint against Eugene M. Travis, Comptroller of the State of New York, and a citizen and inhabitant of said State of New York.

And thereupon your orator complains and says:

1. This is a suit of a civil nature in equity, wherein the matter in controversy exceeds, exclusive of interests and costs, the sum or value of Three thousand Dollars ($3,000), and arises under the Constitution of the United States.

2. This is a suit in equity authorized by law to be brought to redress the deprivation, under color of a statute, of rights, privileges, and immunities secured by the Constitution of the United States.

3. This is a suit of a civil nature in equity, wherein the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three thousand dollars ($3,000), and is between citizens of different states.

4. The Legislature of the State of New York enacted, and the Governor of the State of New York approved, on May 14, 1919, a statute entitled "Chapter 627 of the Laws of 1919," relating to a tax upon personal income, a copy of which act is attached hereto and made a part hereof, and included in pages 26 to 44 of the pamphlet annexed and marked "Exhibit A."

5. The defendant, purporting to act under the authority of said statute, has made certain rules and regulations and forms relating thereto, copies of which are attached hereto and made a part hereof, and are included in pages 1 to 26 of the pamphlet annexed and marked "Exhibit A," and in the pamphlet annexed and marked "Exhibit B," and in the form annexed and marked "Exhibit C."

6. Your orator is a corporation specially chartered under the laws of the State of Connecticut, having its principal place of business and its home office and its manufacturing plant in the City of Stamford, in said State, and is engaged extensively in manufacture and in the sale of its product in interstate commerce and in commerce between the United States and foreign nations. Your orator is authorized to transact its business in the State of New York and maintains an office for the transaction of its business in the City of New York, in said State, where it owns and possesses real and personal property. In the conduct of its business your orator employs
c a large number of persons, many of whom are non-residents of the State of New York as defined in the statute hereto annexed, who are occupied in whole or in part in the business of your orator within the State of New York, the said employes being generally classified as follows:

(*a*) Your orator employs a certain number of persons who reside in the State of Connecticut and are citizens of said State, whose services to your orator are substantially all performed at your orator's office in the City of New York, State of New York, and whose salary is paid to them at stipulated times and in stipulated amounts in the City of New York from funds belonging to your orator within the State of New York.

(*b*) Your orator employs a certain number of persons who reside in the State of New Jersey and are citizens of said State, whose services to your orator are substantially all performed at your orator's office in the City of New York, State of New York, and whose salary is paid to them at stipulated times and in stipulated amounts in the City of New York from funds belonging to your orator within the State of New York.

(*c*) Your orator employs a certain number of persons who reside in the State of Connecticut and are citizens of said State, whose services to your orator are substantially all performed at your orator's office in the City of New York, State of New York, and whose salary is paid to them in checks drawn by your orator at your orator's office in Stamford, Connecticut, and deposited in the mails directed to the employes and received by them in the City of New York.

d (*d*) Your orator employs a certain number of persons residing in the State of Connecticut and citizens of said State, whose services to your orator are rendered partly in the State of New York and partly in the State of Connecticut, some of the service being rendered at the office of your orator in the City of Stamford, and other services being rendered at the office of your orator in the State of New York, said employes being paid by checks of your orator delivered to the employes at Stamford, Connecticut. Of the said employes who are partly occupied in the State of New York and partly without the State of New York, some of them spend most of their working time and are chiefly occupied upon the plaintiff's business in Stamford, Connecticut, and spend

a relatively small part of their working time in the State of New York; and others spend a relatively large part of their working time in the State of New York, and a relatively small part in the State of Connecticut. In the case of such employes the actual proportion of time spent in the State of New York and in the State of Connecticut is not defined or accurately predetermined, the employe spending his time wherever it is for the best interest of the work that he is doing for your orator.

(*e*) Your orator also employs certain persons residing in Connecticut and in New Jersey and citizens of said States, respectively, who are engaged in rendering services to your orator as traveling salesmen and the like, who spend a portion of their time in New York and a portion of their time traveling through various other states. These salesmen are paid by check drawn by your orator and mailed to the employe, sometimes in the State of New York and sometimes in other states outside of the State of New
e York, the checks being mailed sometimes from your orator's office in the State of New York, and sometimes mailed from your orator's office in Stamford, State of Connecticut.

7. The persons residing outside of the State of New York, and citizens of states other than New York, who are occupied in the conduct of your orator's business either all or a portion of their working time in the State of New York, and whose annual salaries or fixed compensation exceed $1,000 a year, exceed in number fifty (50); and their total annual salary or compensation exceeds Two hundred thousand dollars ($200,000). The amount of the tax required by the statute of the State of New York hereinafter set forth to be withheld by your orator from the salaries of said employes residing outside of the State of New York exceeds the sum of Three thousand dollars ($3,000) per annum. The amount of expense to which your orator would be put annually in withholding a percentage of the salaries of said employes as required by said statute would exceed the sum of One thousand dollars (1,000).

8. Most of the persons employed by your orator as aforesaid are engaged by your orator under term contracts, whereby your orator has agreed to pay to them a fixed and stipulated wage or salary for a stipulated time or term; and all of said employes receive salaries and wages constituting fixed and determinable annual or periodical compensation specified in Section 366 of the statute aforesaid.

9. The defendant is a citizen of the State of New York, and is the Comptroller of the State of New York, and as such Comptroller threatens to enforce the provisions of said statute against your orator, and requires your orator to deduct and withhold from the
f salaries and wages payable to its said employes residing in the States of Connecticut and New Jersey, and citizens of said states, respectively, and engaged in whole or in part in the business of your orator in the State of New York, the taxes stipulated and provided in Section 366 of the statute aforesaid, and threatens to

enforce against your orator the penalties provided in Section 376 of the statute if it shall fail and refuse to withhold the sums aforesaid, and to make the returns and to pay the same to the defendant in accordance with the provisions of the statute.

10. The said statute of the State of New York aforesaid is illegal and unconstitutional, and is in particular contrary to and in violation of the guarantees and provisions of the Constitution of the United States as follows: to wit, it is contrary to and in violation of Article 1, Section 8 of said Constitution in that it interferes with and directly burdens commerce between the different states; it is contrary to and in violation of Article 1, Section 10 of said Constitution in that it impairs the obligation of contracts between your orator and its employes; it is contrary to and in violation of section 2 of Article 4 of said Constitution in that it deprives the citizens of the States of Connecticut and New Jersey of the privileges and immunities enjoyed by the citizens of the State of New York; it is in violation of the Fourteenth Amendment to said Constitution in that it abridges the privileges and immunities of citizens of the United States residing in and citizens of Connecticut and New Jersey and states other than the State of New York, and in that it deprives your orator and its said employes of their property without due process of law and denies to them equal protection of the laws.

g 11. By reason of the aforesaid threats of the defendant to enforce the said law against your orator, and require it to withhold the said sums of money, portions of the salaries due by it to its employes, your orator is threatened with great and irreparable injury which it cannot be adequately compensated for at law, in that if it withholds the said sums of money as required by the defendant, it will be put to great and continuing expense in determining amounts to be withheld and rearranging its accounting, and its employes can compel it to reimburse them for such sums so withheld; and your orator, having paid such sums to the defendant, cannot recover the same back at all, or, in any event, only after separate litigations as to each sum withheld as to each employe, involving it in great expense in law suits, and in multifarious and vexatious litigations.

And, in order that your orator and its property may be protected against the unlawful and unjustifiable threatened acts and actions of the defendant, your orator respectfully prays:

(1.) That process of subpœna issue herein directed to the defendant, Eugene M. Travis, as Comptroller of the State of New York, directing him to appear and answer the allegations herein contained, but not under oath, an answer under oath being hereby expressly waived.

(2.) That an injunction issue herein perpetually enjoining the said defendant, Eugene M. Travis, as Comptroller, his clerks, attorneys, agents, and all other persons claiming or holding through

or under him, or acting under his instructions, from in any form or manner whatsoever requiring your orator to deduct or withhold from the salaries, wages, and other fixed and determinable annual or periodical compensation earned by its employes residing in the State of Connecticut, or in the State of New Jersey, or in any other state outside of the State of New York, and engaged wholly in the performance of services in the State of New York, any income tax claimed to be due from such employes to the State of New York on account of said services.

(3.) That an injunction issue herein perpetually enjoining the said defendant, Eugene M. Travis, as Comptroller, his clerks, attorneys, agents, and all other persons claiming or holding through or under him, or acting under his instructions, from in any form or manner whatsoever requiring your orator to deduct or withhold from the salaries, wages, and other fixed and determinable annual or periodical compensation earned by its employes residing in the state of Connecticut, or the State of New Jersey, or in any other state outside of the State of New York, and engaged partly in the performance of services in the State of New York, and partly in the performance of services without the State of New York, any income tax claimed to be due from such employe to the State of New York on account of said services.

(4.) That an injunction issue herein perpetually enjoining the said defendant, Eugene M. Travis, as Comptroller, his clerks, attorneys, agents and all other persons claiming or holding through or under him, or acting under his instructions, from in any form or manner whatsoever requiring your orator to make a return to the defendant of information concerning the amount of salaries, wages, and other fixed or determinable gains or income paid by it to any of its aforesaid employes engaged wholly or in part in rendering services in the State of New York, and residing outside of the State of New York.

(5.) That an injunction issue herein perpetually enjoining the said defendant, Eugene M. Travis, as Comptroller, his clerks, attorneys, agents, and all other persons claiming or holding through or under him, or acting under his instructions, from requiring your orator to pay to the defendant as a tax due from said nonresidents or any of them any sum whatsoever.

(6.) That an injunction issue herein perpetually enjoining the said defendant, Eugene M. Travis, as Comptroller, his clerks, attorneys, agents and all other persons claiming or holding through or under him, or acting under his instructions, from instituting any proceeding or filing any complaint against your orator because of its failure to make, sign, or verify a return of the salaries and wages and other income paid by it to persons in its employ, and residing in the states of Connecticut or New Jersey, or elsewhere, without the State of New York, or from instituting any proceeding at law or at equity against your orator for the recovery of pen-

alties or otherwise for its failure to withhold such amounts from the wages and salaries due to its non-resident employes, and to make and file a return thereof to this defendant, as required by the provisions of said law.

(7.) That a restraining order or preliminary injunction be issued without delay directed to the said defendant, Eugene M. Travis, as Comptroller, enjoining and restraining him as set forth in the five preceding paragraphs.

(8.) For such other and further relief as upon the facts as they shall be made to appear may be just and reasonable.

ARCHIBALD COX,
Solicitor for Complainant.

LOUIS H. PORTER,
Counsel for Complainant.

j STATE OF NEW YORK,
County of New York, ss:

John H. Towne, being duly sworn deposes and says, that he is the Secretary of The Yale & Towne Manufacturing Company, the complainant herein; that he has read the foregoing Bill of Complaint, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief; and that as to those matters he believes it to be true. That the reason why this verification is not made by the complainant in person is because complainant is a corporation, and deponent is an officer thereof, to wit, the secretary.

JOHN H. TOWNE.

Sworn to before me this 1st day of July, 1919.
(Sgd.) JEANE VOLLENHOVER,
Notary Public, New York County, No. 28.

Register's No. 10,004.
Term expires March 30, 1920.

STATE OF NEW YORK

The A, B, C

OF THE

Personal Income Tax Law

BY

EUGENE M. TRAVIS
State Comptroller

JUNE, 1919

BULLETIN No. 1

ALBANY
J. B. LYON COMPANY, PRINTERS
1919

FOREWORD

New York state has adopted the plan of taxing individuals on their incomes. The bill establishing the system became a law on May 14, 1919. It is now operative and affects residents and nonresidents of the state.

It is realized that individuals differed in their opinions respecting the merits or demerits of this new plan of taxation, but now that the law is a fact personal views should be submerged in an honest endeavor to comply with legal requirements.

The duty of administering the act is imposed on the comptroller. I shall strive to execute the powers conferred according to the purposes and the intent of the act and in a manner fair alike to the state and to the individuals affected thereby. In that effort I am hopeful of having the earnest and hearty co-operation of all citizens.

This act is of such importance that immediate and accurate information respecting its provisions should be made available for the great body of taxpayers affected thereby. It is for that reason that this bulletin is being published. Later, when rules and regulations have been formulated and adopted, a second bulletin will be published. It is thought that the information contained in this pamphlet is accurate but closer study of the law and rules and regulations when established, may require the amplification or the modification of some of the answers herein given. If that be the case, all such changes will be noted in future bulletins.

Eugene M Travis

State Comptroller.

ALBANY, N. Y., MAY 29, 1919.

NOTE

This is the first of a series of bulletins. Subjects not covered and questions not answered herein will be cared for in publications hereafter issued and by the rules and regulations of the comptroller when promulgated.

THE LAW

1. What is the income tax law?

It is article 16 of the tax law, added by chapter 627, laws of 1919.

2. What is its purpose and intent?

The obvious purpose and intent of the law is that, commencing with 1919, all gains, profits and income of residents, from all sources, and of nonresidents, from sources within the state, shall be charged and assessed, unless expressly exempted, with an income tax at progressive rates, and that such tax shall be paid by the owner of such income or by the proper representative thereof having the receipt, custody, control or disposal of the same.

THE TAX

3. What are the rates of tax?

The tax is imposed at graduated rates: 1 per cent on the first $10,000 of taxable income, 2 per cent on the next $40,000, and 3 per cent on taxable income in excess of $50,000.

4. Are any surtaxes imposed?

No.

5. Does the state income tax law resemble titles I and II of the federal revenue act of 1918?

Yes; in respect of individuals, it conforms closely to them. Many provisions of the state act are identical with those contained in the federal statute.

6. Is one's entire income taxed?

No. Put simply, the law provides that to arrive at the amount of " taxable income " one

(a) need not include income of certain characters (see answers 39 and 41) in computing " gross income " ;

(b) may subtract from " gross income " certain deductions (see answers 42 and 44) to arrive at " net income " ;

(c) is allowed, if a resident, personal exemption according to status (see answer 49), as a deduction from " net income ", in calculating " taxable income " (an exception to this rule is stated in answer 49);

(d) is allowed, under certain conditions, if a nonresident, credit for a ratable portion of income taxes paid to the state or country of his residence (see answer 51).

7. When is the first tax payable?

On or before March 15, 1920, in respect of income of 1919.

8. Where and to whom is it to be paid?

To the state comptroller, at his offices in Albany and New York city, unless the state is districted and branch offices established. (This question will be more fully answered in a bulletin to be published later when plans are fully worked out.)

9. Can remittances be made through the mail?

Yes; that plan is preferable. (The instructions which will accompany return blanks will cover this point.)

10. Should the remittance accompany the return?

Yes. (Section 377)

11. Is it legal to contract to pay another's income tax?

No. It is unlawful for any person to agree or contract, directly or indirectly, to pay or assume or bear the burden of any tax payable by a taxpayer under this law. Any such contract is null and void and incapable of enforcement by any court. (Section 385). This does not apply to the withholding of the tax in whole or in part, by a withholding agent, in the case of a nonresident. (Section 366)

12. Is the income tax a substitute for some other tax?

Yes; to a limited extent. It is provided that after July 31, 1919, no personal property assessment shall be made on any assessment-roll of a city, town, village, school or other special tax district on account of the following, if the income therefrom be subject to the tax imposed by the income tax law:

(a) Money on hand, on deposit or at interest

(b) Bonds, notes and choses in action, and

(c) Shares of stock in corporations other than banks and banking associations

if such be owned by any individual or constitute a part of a trust or estate subject to the income tax. Otherwise, the income tax is in addition to all other taxes imposed by law. (Section 352)

The proper construction of this section seems to be that individuals may and should be assessed on account of intangibles, of the characters mentioned above as personal property, in all tax districts where the assessments are required by law to be made prior to July 31, 1919, but that thereafter no personal property assessments can be based thereon.

13. May a valid tax be levied on such an assessment on or after August 1, 1919?

Yes. The proper construction of section 352 of the tax law and of section 3 of article 16 thereof seems to be that if a

valid personal property assessment, of the character described in the last preceding answer, is made prior to August 1, 1919, a valid tax may be levied thereon after that date.

14. How are the taxes collected by the comptroller to be applied?

The comptroller is required (a) to retain a fund of $250,000 from which to pay refunds and abatements to taxpayers; (b) of the remainder, 50 per cent is to be paid into the treasury of the state and used for and applied to state uses and purposes; (c) the remaining 50 per cent is to be apportioned periodically, — at least once in three months — by the comptroller, and paid to the treasurers of the several counties of the state in the proportion that the assessed valuation of the real property of each county bears to the aggregate assessed valuation of the real property of the state. In the case of counties included in the city of New York, payments shall be made to the receiver of taxes of such city. (Section 382)

15. How will the portion paid to a county treasurer outside of Greater New York be applied?

The county treasurer of each county is required to apportion the amount received among the several towns and cities within the county in the proportion that the assessed valuation of real property of each town or city bears to the aggregate assessed valuation of the real property of the county. In the case of a city, he shall pay the amount apportioned to its chief fiscal officer to be used for general city purposes. In the case of a town, he shall credit the amount apportioned against the county tax payable by a town. If the amount apportioned exceeds the town's share of the county tax, the excess shall be paid to the supervisor to be applied to general town uses and purposes. In the case of the city of New York, the shares of the several counties wholly contained within the city shall be paid into the general fund for the reduction of taxation of the city.

PERSONS TAXED

16. Who is an income taxpayer?

Any person, trust or estate who or which is subject to, or whose income is, in whole or in part, subject to a tax imposed by article 16 of the tax law.

17. Upon whom or the incomes of whom is a tax imposed?

A tax is imposed in respect of the incomes of (a) residents and (b) nonresidents.

18. Who is a resident?

A natural person, not a transient, is a resident of the state for purposes of the income tax. Whether or not one is a transient is determined by his intentions with regard to his

stay. A person who becomes a resident of the state at any time before March 15 of the next succeeding calendar year is a resident of the state for the calendar year for purposes of the income tax. (Section 350, subdivision 7)

19. Who is a nonresident?

A person is a nonresident, within the meaning of the act, if he receives taxable income from property owned or from a business, trade, profession or occupation carried on in the state but is not a resident thereof.

20. Is an alien taxable under this act?

Yes; accordingly as the tax is imposed on him if a resident, or upon his income if a nonresident.

21. Is a corporation taxable under this law?

No. A corporation is taxable under other provisions of law.

22. May a minor be a taxpayer?

Yes. A minor, as such, is not exempt.

23. Is a partnership liable to a tax ?

No, but the members of the partnership are, as individuals. The law, in effect, ignores the partnership's existence as an independent entity and imposes no tax against it, but each individual member of a partnership is taxed on his share of the partnership's " net income ", whether distributed or not. (Section 364)

24. Who is a " fiduciary " ?

An individual or corporation acting in a fiduciary capacity for any person, trust or estate; as, for instance, a guardian, trustee, executor, administrator, receiver or conservator. (Section 350, subdivision 5)

25. Is a fiduciary a taxpayer?

Technically, no; practically speaking, yes, because a fiduciary is responsible for the payment of the tax imposed on the income received by certain estates or trusts (section 365). (See answers 41 and 42.)

YEAR — TAXABLE AND FISCAL

26. What is a taxable year?

The words " taxable year " mean the calendar year or the fiscal year upon the basis of which " net income " is computed. (Section 350, subdivision 4)

27. What is a fiscal year?

The words "fiscal year" mean an accounting period of twelve months, ending on the last day of any month other than December. (Section 350, subdivision 4)

27a. What is the first taxable year?

The calendar year 1919, or that part of a fiscal year ending in 1919, between January 1, 1919, and the end of such fiscal year.

28. Must one return income for a calendar year?

No; in reporting income of 1919, one may elect whether to report for the calendar year or for a fiscal year ending during such calendar year. This statement is subject to the following qualifications: (1) That "net income" must be computed upon the basis of the taxpayer's annual accounting period. (2) If his annual accounting period is other than a fiscal year, as defined, or if he has no accounting period or does not keep books, then "net income" must be computed on the basis of the calendar year. (Section 358). The return should be made for the same accounting period as that used for the federal return, if such basis clearly reflects income.

29. If one reports income for a "fiscal year" ending during 1919, is a tax imposed on the "net income" for the entire fiscal year?

No. It is said in section 351:

> "Such tax shall first be levied, collected and paid in the year 1920 upon and with respect to the taxable income for the calendar year 1919, or for any taxable year ending during the year 1919",

but that statement must be construed in conjunction with the the following quotation from section 370:

> "If a taxpayer making his first return for income tax keeps his accounts on the basis of a fiscal year, he shall make a separate return for the period between the beginning of a calendar year in which such fiscal year ends and the end of such fiscal year.
>
> "In all of the above cases the net income shall be computed on the basis of such period for which separate return is made and the tax shall be paid thereon at the rate for the calendar year in which such period is included."

The taxpayer who keeps his accounts by a fiscal year, as defined, will, in 1920, for 1919, unless he elects to change to the calendar year, file two returns with the comptroller, one for the fiscal year, and one for the period commenced January 1, 1919, and ended on the date of the ending of his fiscal year. The two returns are needed in the first year because of the

necessity of having the income and expenses of the entire year in order to determine the taxable income for the portion of the year. His tax will be calculated on the " net income " disclosed by the report for the shorter period.

30. If one reports in the first instance according to the calendar year, may he later change to a fiscal year?

Yes, if he first obtains the consent of the comptroller.

31 If one reports in the first instance for a fiscal year, may he later change to the calendar year?

Yes, if he first obtains the consent of the comptroller.

32. If one is a member of a partnership and calculates his " net income " upon the basis of a period different from that upon the basis of which the " net income " of the partnership is computed, what must he return as his share of the " net income " of the partnership?

He is required to return his distributive share of the " net income " of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which his " net income " is computed. (Section 364)

33. Is that true of 1919 income returns?

This question will be more fully answered by rules and regulations hereafter promulgated. Quite likely in such a case the individual will be required to include in his return only his distributive share of the " net income " of the partnership earned after January 1, 1919, and before the end of the partnership's fiscal year.

INCOME — GROSS, NET AND TAXABLE

34. What is income?

Income, in a broad, general way, means all wealth which flows into a taxpayer other than as a mere return of capital. It includes " gains and profits ", including gains derived from the sale, exchange or other disposition of capital assets. It is not limited to cash alone. The statute recognizes as income-determining factors other items, among which are inventories, accounts receivable, property exhaustion and accounts payable for expenses incurred.

35. What is " gross income "?

" Gross income " means income in the broad sense, less such items thereof as are specifically exempted by statutory provisions.

36. What is "net income "?

That which remains of " gross income " after subtracting the deductions allowed by law, is " net income ".

37. What is " taxable income "?

" Taxable income " is what remains of " net income " after deducting the personal exemption, if any, allowed by section 362, or the credit, if any, granted by section 363. It is the base upon which the income tax is calculated.

38. Does " gross income " have the same meaning with reference to both residents and non-residents?

No. In general, with reference to residents, it means income from all sources within and without the State, and, as applied to non-residents, it means income from all sources within the State only.

39. What constitutes the " gross income " of a resident?

It is the total of every item of income derived from all sources whatever except those enumerated in paragraphs " f " to " n " of this answer, received or accrued during the taxable year for which a return is rendered, whether in cash or its equivalent. It includes gains, profits and income derived:

(a) From salaries, wages or compensation for personal service, of whatever kind and in whatever form paid.

(b) From professions, vocations, trades, businesses, commerce, sales, dealings in property, whether real or personal growing out of the ownership or use of or interest in such property.

(c) From interest, rent, dividends, securities.

(d) From the transaction of any business carried on for gain or profit.

(e) From any other source whatever.

It excludes the following items, which are exempt:

(f) Proceeds of life insurance policies paid upon the death of the insured to individual beneficiaries or to the estate of the insured. (Section 359, subdivision 2, paragraph " a ")

(g) Amounts received as a return of premium or premiums, by the insured under life insurance, endowment or annuity contracts. (Section 359, subdivision 2, paragraph " b ")

(h) Amounts received for personal injuries or sickness, through accident or health insurance or under workmen's compensation acts. (Section 359, subdivision 2, paragraph " c ")

(i) Damages received, whether by suit or agreement on account of injuries or sickness, or through the war risk insurance act or any law providing relief for injured or disabled members of the federal military or naval forces. (Section 359, subdivision 2, paragraph " c ")

(j) Gifts, bequests and devises; but income from these is not exempt. (Section 359, subdivision 2, paragraph " e ")

(k) Compensation received from the United States by officials or employes thereof, including persons in the military or naval forces. (Section 359, subdivision 2, paragraph " f "). Seemingly, this includes, also, persons in the employ of railroads under federal control so long as they remain under such control.

(l) Interest upon (1) obligations of the United States or its possessions, (2) securities issued under the farm loan act of July 17, 1916, or (3) by the war finance corporation, and (4) obligations of the State of New York and of the municipal corporations or political subdivisions thereof. (Section 359, subdivision 2, paragraph " d ")

(m) Interest on investments upon which the investment tax has been paid since June 1, 1917, under section 331 of the tax law, for the years for which such tax shall have been paid. (Section 359, subdivision 2, paragraph " d ")

(n) Income received by officers of certain religious, benevolent, educational, scientific and eleemosynary denominations or institutions, and cemetery associations, if used exclusively for carrying out such purposes. (Section 359, subdivision 2, paragraph " g ")

40. In what respects does the federal definition of " gross income " (a) agree with and (b) differ from that contained in the State law?

(a) It agrees with the state definition in respect of paragraphs " b ", " c ", " d ", " e ", " f ", " g ", " h ", " i' ", and " j " of the last preceding answer.

(b) It differs from the state definition in the following main respects:

1. With reference to paragraphs " a " and " k " the federal act includes in " gross income " the compensation received by federal officers and employes, and so much of the salary or compensation received during the present war for active service by a person in the military or naval forces of the United States as exceeds $3,500. Furthermore, under the federal statute, the commissioner of internal revenue has determined (article 71, regulation 45; treasury decision 2843) that compensation paid its officers and employes by a state or political subdivision thereof is not taxable. As has been seen, the state act expressly exempts compensation received from the United States by federal officers and employes, and of persons in the military or naval forces of the United States. On the other hand, it does not exempt compensation of state and municipal officers and employes, nor has the comptroller the power to promulgate a regulation exempting such income.

2. The provision of the federal act corresponding with paragraph " l " of the last preceding answer exempts the obligations of the United States or its possessions and bonds issued by the war finance corporation, but provides, in relation to obligations of the United States issued after September 1, 1917, and in relation to bonds issued by the war Finance Corporation, that the interest shall be exempt only if and to the extent provided in the respective acts authorizing the issue thereof, as amended and supplemented. The state law exempts entirely the interest from those securities. On the other hand, the federal statute exempts interest upon the obligations of all states, territories, or political subdivisions thereof, or the District of Columbia, while the state act exempts only interest on the obligations of the state of New York and the municipal corporations or political subdivisions thereof.

3. The exemption enumerated in paragraph " m " of the last preceding answer is original in the state law. No similar or substantially similar exemptions are found in the federal statute.

4. The federal act contains an exemption analogous to " n " of the last preceding answer, as will be found upon examination of section 231 of the federal statute.

5. The federal act does contain other specific exemptions of income, as, for instance, the income of foreign governments and income accruing to states, territories, etc., which are not paralleled in the state law, but, as the state income tax is imposed only in respect of natural persons, resident or non-resident, and estates and trusts, these differences appear immaterial.

41. What different meaning does " gross income " have as to a non-resident?

In the case of a non-resident, " gross income " has substantially the same meaning as in the case of a resident, except that income from sources without the state is excluded. Neither does it include annuities, interest on bank deposits, bonds, notes or other interest-bearing obligations, and dividends from corporations, except to the extent which such income shall be a part of income from any business, trade, profession or occupation carried on in this state subject to taxation under this law. (Section 359, subdivision 3)

42. What items may a resident deduct from " gross income " to ascertain " net income " from all sources?

In arriving at " net income ", a resident may deduct from " gross income " the following items:

(a) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade

or business, including reasonable compensation for personal services actually rendered, and certain rentals. (Section 360, subdivision 1)

(b) Such proportion of the total interest paid or accrued during the taxable year on indebtedness as his " net income " from all sources bears to his total income from all sources. (Section 360, subdivision 2)

(c) Losses sustained, if incurred in trade or business during the taxable year, and not compensated for by insurance or otherwise. (Section 360, subdivision 4)

(d) Losses sustained in any transaction entered into for profit though not connected with a trade or business, if not compensated for by insurance or otherwise. (Section 360, subdivision 5)

(e) Losses sustained during the taxable year of property not connected with the trade or business, if arising from fires, storms, shipwrecks or other casualty, or from theft, and not compensated for by insurance or otherwise. (Section 360, subdivision 6)

(f) Debts ascertained to be worthless and charged off within the taxable year. (Section 360, subdivision 7)

(g) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence. (Section 360, subdivision 8)

(h) Taxes other than income taxes, paid or accrued within the taxable year, imposed (1) by authority of the United States or of any of its possessions, (2) by authority of any state or territory, or municipality or taxing subdivision thereof, not including those assessed against local benefits of a kind tending to increase the value of the property assessed, and (3) by authority of any foreign government. (Section 360, subdivision 3)

(i) In general, in the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements in the manner provided by law and according to rules and regulations to be established by the comptroller. (Section 360, subdivision 9)

(j) Contributions or gifts, not in excess of 15 per cent of the taxpayer's " net income " as computed without the benefit of this deduction, made within the taxable year, to corporations or associations incorporated or organized under the laws of this state and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to the special fund for vocational rehabilitation

authorized by section 7 of the act of congress, known as the vocational rehabilitation act. This deduction to be allowed only if verified under rules and regulations prescribed by the comptroller. (Section 360, subdivision 10)

43. In respect of residents, do the foregoing deductions differ from those allowed by the federal statute? If so, to what extent?

Yes, to some extent.

The deductions enumerated in paragraphs " a ", " f " and " g " are allowed by both acts.

With reference to paragraph " b ", the state deduction is on the basis stated above. The corresponding federal provision reads as follows:

> " All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States, issued after September 24, 1917), the interest upon which is wholly exempt from taxation under this title as income to the taxpayer * * "

While the language of the state statute, stated in paragraphs " c ", " d " and " e " is identical with that contained in the federal act, the basis for determining such losses in the case of property acquired prior to January 1, 1919, will be the fair market value as of that date. In that respect, the determination of such losses differs from the determination under the federal law.

In relation to paragraph " h ", the corresponding federal provision authorizes the allowance as a credit, to a citizen, any income war profits and excess profits taxes paid during the taxable year to any foreign country upon income derived from sources therein or to any possession of the United States, and, to a resident of the United States, any such taxes paid during the taxable year to any possession of the United States. The state statute does not permit those deductions. Furthermore, the federal act permits the taxpayer to deduct all taxes paid or accrued within a taxable year or imposed by the authority of any state or territory, or any municipal or taxable subdivision of any state or territory. The state law limits the deduction to " taxes other than income taxes ".

The wording of the deduction stated in paragraph "i ", in the state law, is identical with that contained in the federal statute, except that January 1, 1919, is substituted for March 1, 1913. This will require the fixing of a fair market value of properties developed or existing on January 1, 1919, as of that date rather than as of March 1, 1913, as specified in the federal act.

With reference to the deduction specified in paragraph " j ", the federal statute permits the taxpayer to deduct contri-

butions or gifts to corporations organized and operated exclusively for religious, charitable, scientific or educational purposes or for the prevention of cruelty to children or animals, etc., without restriction as to the place of incorporation, whereas the New York statute restricts such deductible contributions to those corporations only which are incorporated by or organized under the laws of New York State. This applies alike to residents and non-residents.

44. In what respects, if any, do the deductions allowed non-residents differ from those allowed residents, as stated in answer 42?

They differ fundamentally in that they are allowed only " if, and to the extent that, they are connected with income arising from sources within the state ". Subject to that qualification, non-residents are entitled to deductions enumerated in paragraphs " a ", " c ", " f ", " g ", " h " and " i ".

The provision corresponding to paragraph " b " in answer 42, allows a non-resident to deduct the proportion of interest paid or accrued within the taxable year on indebtedness, which the amount of "gross income " from sources within the state bears to the taxpayer's " gross income " from all sources within and without the state.

The deductions stated in paragraphs " d " and " e " are allowed non-residents only in respect of transactions or of property within the state.

Deduction " j " is identical for residents and non-residents.

45. What items of expense are named in the law as non-deductible in calculating that income?

It is specifically provided in section 361 that no deduction shall be allowed in respect of (a) personal, living or family expenses; (b) any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate; (c) any amount expended in restoring property or in making good the exhaustion thereof. for which an allowance is or has been made; (d) premiums paid on any life insurance policy covering the life of any officer. employe or person financially interested in any trade or business carried on by the taxpayer, if the taxpayer is directly or indirectly a beneficiary under such policy. (Section 361)

46. How is the " net income " of a partnership to be computed?

It is to be computed in the same manner and on the same basis as is provided for computing the " net income " of individuals, except that the deduction provided in subdivision 10 of section 360 (See question 42 " j ") is not allowable, and the personal exemptions stated in section 362 shall be allowed only to the individual partners. (Section 364)

47. How shall the "net income" of an estate or trust be computed?

It shall be calculated on the same basis as that provided for individual taxpayers, except that there shall also be allowed as a deduction any part of the "gross income" which, pursuant to the terms of the will or deed creating the trust, is, during the taxable year, paid to or permanently set aside for (a) the United States, any state, territory, or any political subdivision thereof, or the District of Columbia, and (b) any corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, if no part of the net earnings of such corporation or association inures to the benefit of any private stockholder or individual. (Section 365, subdivision 2)

48. To what allowable deductions and exemptions are estates and trusts entitled?

For the purpose of taxation, the income of estates and trusts may be divided into the following classes:

(1) Income received by estates of deceased persons during the period of administration or settlement;

(2) Income accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interests;

(3) Income held for future distribution under the terms of a will or trust;

(4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals;

(5) Income collected by the guardian of an infant to be held or distributed as the court may direct;

(6) Income of the estate of any deceased person which, during the period of administration or settlement, is properly paid or credited to any legatee, heir or other beneficiary.

An estate or trust falling within the first three classes enumerated above is taxed as an entity and the tax must be paid directly by the fiduciary. In such a case, there is allowed in determining "net income" of the estate of any deceased person during the period of administration or settlement, the amount of income properly paid or credited to any legatee, heir or other beneficiary, which income is taxable directly to the beneficiary, see (6) above and, as an exemption, the personal exemption provided for a single person.

In case of an estate or trust falling within classes four, five and six, the income is required to be reported in the return of the beneficiary taxpayer and the tax paid directly by him or it.

EXEMPTIONS

49. What personal exemptions are allowed resident taxpayers in calculating taxable income?

For the purpose of allowing personal exemptions, resident taxpayers are divided into two classes: (a) single persons and married persons not living with husbands or wives, who are not the heads of families, and (b) single persons and married persons not living with husbands or wives, who are the heads of families, and married persons who live with husbands or wives.

To a person in the first class, an exemption of $1,000 is allowed. A person in the second class is entitled to an exemption of $2,000, but a husband and wife living together may have but one exemption. In both cases an additional $200 for each dependent, other than husband or wife, if such dependent is under eighteen years of age or is incapable of self-support because mentally or physically defective, is allowed. The only exception to this rule is that a taxpayer receiving salary, wages or other compensation from the United States as an official thereof is entitled to only so much of the personal exemption as is in excess of the aggregate amount of such salary, wages or other compensation. (Section 362)

50. Are the personal exemptions stated in the last preceding answer allowed non-resident taxpayers?

No.

51. Is a non-resident taxpayer allowed any exemption or credit deduction from " net income " in calculating " taxable income "?

Yes. While such a taxpayer is not entitled to the personal exemption stated in answer 49, if he becomes liable to income tax to the state or country of his residence upon his " net income " for the taxable year derived from sources within this state, he will be credited on his New York state income tax with such proportion of income tax paid by him to the state or country of his residence as his income subject to taxation under the law of this state bears to his entire income upon which the tax is payable to the state or country of his residence, if the laws of that state or country grant a substantially similar credit to residents of this state subject to income tax under its laws.

52. May a partnership claim for the individual partners the personal exemptions stated in answer 49?

No; those exemptions may be allowed only to the individual partners upon their returns.

53. Are the personal exemptions enumerated in answer 49 ever allowed an estate or trust?

Yes; the exemption granted a single person is allowed in that class of cases in which a trust or estate is taxed as an entity, as stated in subdivision 3 of section 365. (Answer 48)

METHOD OF CALCULATING INCOME, GAIN AND LOSS

54. May a taxpayer calculate income according to the method of accounting regularly employed in keeping his books?

Yes; he must return his income in accordance with his books, subject to the authority of the comptroller to require another method if, in his judgment, the books do not clearly reflect income. If he keeps no books, the comptroller determines the method of computing income.

55. If it does not clearly reflect income or if no books are kept, how shall income be calculated?

It shall be calculated upon such basis and in such manner as, in the opinion of the comptroller, clearly reflects income. (Section 358) Rules and regulations to be promulgated will more fully answer this question.

56. How should one ascertain gain or loss sustained from the sale of property?

For the purpose of calculating gain or loss in respect of property, all property is allocated to two classes: (a) that owned on January 1, 1919, or (b) that acquired on or after that date. In the case of property acquired before January 1, 1919, the taxpayer will use as a basis the fair market price or value as of January 1, 1919, whereas in respect of property acquired on or after that date, he will use as a basis the cost thereof or the inventory value, if the inventory is made upon the basis prescribed by the comptroller. (Section 353)

57. When property is exchanged for other property, how shall gain or loss be determined?

If property, other than stock or securities exchanged in connection with a reorganization, merger or consolidation of a corporation, is received in exchange for other property, it shall, for the purpose of determining gain or loss, be treated as the equivalent of cash to the amount of its fair market value. (Section 354)

58. What about gain or loss on exchanges of stock or securities in connection with a reorganization, merger or consolidation of a corporation?

(a) In such a transaction, if the taxpayer receives new stock or securities of no greater aggregate par or face value,

no gain or loss shall be deemed to occur from the exchange. (Section 354) (b) If the taxpayer receives new stock or securities of an aggregate par or face value in excess of the aggregate par or face value of the stock or securities exchanged, the amount of the excess in par or face value shall be treated as a gain to the extent that the fair market value of the new stock or securities is greater than the cost of the stock or securities exchanged, if acquired on or after January 1, 1919, or its fair market price or value as of January 1, 1919, if acquired before that date. (Section 355)

59. May inventories be used?

Yes; whenever in the opinion of the comptroller they are necessary in order to clearly determine the taxpayer's income. It is conditioned that inventories shall be taken upon such bases as the comptroller may prescribe, (a) conforming as nearly as may be to the best accounting practice in the trade or business, (b) most clearly reflecting income and (c) conforming as nearly as practicable to the forms and methods prescribed by the commissioner of internal revenue. (Section 356)

FIDUCIARIES

60. Does the state law resemble the federal statute in its application to estates and trusts?

Yes, very closely. If one keeps in mind the difference in geographical area affected by the two statutes and that the federal act divides individual taxpayers into two classes, (1) citizens and alien residents, and (2) nonresidents aliens, while the state law allocates them to two classes in respect of residence within the state,— that is, (1) residents and (2) nonresidents — it will be found that the statutes are, otherwise, alsmost identical in wording.

For a definition of "fiduciary", see answer 24.

In relation to " gross ", " net " and " taxable income ", see answers 34 to 48.

In relation to " returns ", see answers 85, 86 and 97.

WITHHOLDING AGENTS

61. Who is a withholding agent?

Any person, corporation, association or partnership, in whatever capacity acting, who has the control, receipt, custody, disposal or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits and income taxable under the law, is a withholding agent. (Section 350, subdivision 10)

62. Is a lessee or mortgagor of property, a fiduciary, an employer, or a state or a municipal officer or employe, a withholding agent?

Yes, if he has the control, receipt, custody, disposal or payment of items of fixed or determinable "taxable income" described in answer 61, of any resident or nonresident. (Section 350, subdivision 10)

63. What must a withholding agent retain?

Although subdivision 1 of section 366 requires a withholding agent to deduct and withhold 2 per cent of personal service income if the amount thereof for any nonresident taxpayer in any taxable year equals or exceeds $1,000, it is obvious that that provision is in conflict with the general purpose and intent of the statute. It is not in harmony with section 351 which imposes the tax, nor with subdivision 3 of section 366, which indemnifies a withholding agent against the claims and demands of taxpayers on account of a tax deducted and withheld and requires the withholding agent to account for a "tax" deducted. The comptroller will promulgate a rule requiring a withholding agent to deduct and withhold 1 per cent of the first $10,000 of all fixed and determinable annual or periodical personal service income of which he has the control, receipt, custody, disposal or payment, if the amount thereof in any taxable year equals or exceeds $1,000, and 2 per cent of all such income in excess of $10,000 in any taxable year, unless the recipient of the income files with him (the withholding agent) a certificate in the form to be prescribed by the comptroller showing that he is a resident of the state.

64. What is meant by personal service income?

It means all salaries, wages, commissions, gratuities, emoluments, perquisites and other fixed and determinable annual or periodical compensation, of whatever kind and in whatever form, paid or received for personal service. (Section 366, subdivision 1)

65. Should deducting and withholding be on the basis of the calendar year or the basis of the taxpayer's fiscal year?

Deducting and withholding should be on the basis of the calendar year; otherwise great confusion will arise.

66. Should a withholding agent deduct and withhold from payments due after May 14, 1919, on account of payments made before that date but since January 1, 1919?

Yes. The attorney-general has held, in a letter opinion dated May 29, 1919, that the deducting and withholding provision is to be construed retroactively, and that if the withholding agent has the opportunity to deduct and withhold according to the plan stated in answer 63, he should do that.

67. What about payments made prior to May 14, 1919, if the employe has left the service of the employer, or if payments made or to be made since May 14, 1919, are insufficient to meet the withholding requirements

In such a case the liability of the withholding agent is limited to the amount, if any, which he has the opportunity to deduct and withhold. If the employee left his service and was fully paid prior to May 14, no liability exists. If amounts due and payable are insufficient to meet the withholding requirement after May 14, 1919, the withholding agent will be liable to the full extent thereof but no more. (Letter opinion of attorney-general, May 29, 1919)

68. Should a withholding agent calculate as a portion of the amount paid or to be paid during 1919, the aggregate of payments made before May 14, 1919?

Yes.

69. Is deducting and withholding required in cases where the personal services are rendered entirely without the state by a non-resident?

No. (Letter opinion of attorney-general, May 29, 1919)

70. Where the income of a non-resident is for personal service rendered partly within and partly without the state, is all of it taxable in New York?

No. That portion received for services without the state is not taxable against nonresidents, but payments for services performed within the state are taxable. (Letter opinion of attorney-general, May 29, 1919)

70a. Is withholding required in cases where the personal services are rendered partly within and partly without the state by a non-resident?

Yes. Rules and regulations to be established by the comptroller will provide for the abatement to the nonresident of such portion of the sum deducted and withheld as relates to the personal service compensation earned without the state, or that the withholding agent may deduct in respect of the income earned within the state only and support his return to the comptroller with an appropriate affidavit.

70b. What must a withholding agent do with the per cent of income withheld?

He must pay it to the comptroller on or before the 15th day of March next following the close of the calendar year during which the payments were made or credited. (Section 366, subdivision 3)

70c. Is there any exception to the foregoing rule?

Yes; if the taxpayer shall have paid the tax to the comptroller, it shall not be again collected from the withholding agent. (Section 366, subdivision 5)

70d. What must a withholding agent do in respect of income, whether withheld or not?.

He shall return to the comptroller complete information concerning the items of fixed and determinable annual or periodical income of any taxpayers, except interest represented by coupons payable to bearer, if the amount of such income in any taxable year, under the receipt, custody or control of the withholding agent, equals or exceeds $1,000, subject to the authority of the comptroller to limit and regulate these requirements as he may determine. (Section 366, subdivision 2)

71. Is a withholding agent personally liable for a tax required to be withheld?

Yes, to the extent that the 2 per cent required to be retained will pay the tax. (Section 366, subdivision 3)

72. Is a withholding agent relieved of liability to the recipient for the percentage of income withheld?

Yes. (Section 366, subdivision 3)

RETURNS

73. With whom is a return of income required to be filed?

Taxpayers must file returns of income with the state comptroller. (Section 371)

74. When must they be filed?

On March 15 or before, next following the close of a taxable year. (Section 371)

75. Can the time for filing a return be extended?

Yes; the comptroller may grant a reasonable extension if, in his judgment, good cause exists. The extension of time may not be for a longer period than six months, except in the case of a taxpayer abroad, and, in both cases, interest at 6 per cent per annum will be charged on the tax. Rules and regulations to be adopted will answer this question more fully. (Section 371)

76. Who must file returns?

In general, returns must be filed by (a) resident taxpayers (section 367, (b) nonresident taxpayers, (c) fiduciaries (section 369), (d) withholding agents (section 366, subdivisions 2 and 3) and (e) partnerships (section 368).

77. When must a resident taxpayer file a return and what must it show?

Every resident taxpayer having a " net income " for a taxable year of $1,000 or over, if single or if married and not living with husband or wife, or of $2,000 or over if married and living with husband or wife, is required to make a return of income.

It must show a taxpayer's " gross income " and the deductions and the credits allowed by law, and such other data as may be called for on the return form to be prescribed by the comptroller in order that the true tax liability may be determined. (Section 367)

78. If a husband and wife living together have an aggregate " net income " of $2,000 or more, must each file a return?

Each may file a return or they may join in rendering a single return. (Section 367)

79. In such a case, if they make separate returns, how may the personal exemption be claimed?

The personal exemption of $2,000 may be taken by either or pro rated between them. (Section 362, subdivision 1)

80. If a taxpayer is unable to make a return, by whom shall it be rendered?

In such a case it may be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of the disabled taxpayer. (Section 367)

81. What should the return of a non-resident taxpayer show?

It must show " gross income " from all sources within the state, and if the deductions authorized by section 360 are claimed, it must show " gross income " from sources both within and without the state. (Section 367)

82. Are partnerships required to file returns?

Yes; every partnership must make a return for each taxable year. (Section 368)

83. What must the return of a partnership disclose?

It must show (a) " gross income ", (b) the deductions allowed by law, (c) the names and addresses of individual members entitled to distributive shares of " net income ", and (d) the distributive share of each. (Section 368)

84. May individuals who are members of partnerships be required to make a return in relation to the business of the partnership?

Yes; the comptroller may require any such taxpayer to make a return stating the gross receipts and net gains or profits of the partnership for any taxable year. (Section 364)

85. Are fiduciaries required to file returns?

Yes. Every fiduciary, except receivers appointed by authority of law in possession of part only of the property of a taxpayer, must make a return for the estate or trust or for the taxpayer for whom he acts (a) in case the taxpayer is a resident single person or if married and not living with husband or wife, if the " net income " is $1,000 or more, or in case the taxpayer is married and lives with husband or wife, if the " net income " is $2,000 or more in a taxable year; (b) in case the " net income " of the taxpayer, if an estate or trust, is $1,000 or over, or, (c) in case any beneficiary is a taxpayer other than a resident of the state. (Section 365, subdivision 2, and section 369)

86. What must the return of a fiduciary show?

It shall disclose the items of (a) " gross income ", (b) deductions, (c) exemptions, (d) credits and (e) a statement of each beneficiary's distributive share whether distributed or not, and such other data as may be called for on the form to be prescribed by the comptroller, in order that the income tax liability of the estate or trust or the distributive interests of the beneficiaries may be disclosed.

87. Is a withholding agent required to make a return?

Yes; if required to deduct and withhold any tax, he shall make a return thereof and pay the tax to the comptroller. If not required to deduct and withhold any tax, he must, nevertheless, make a return of information to the comptroller of the taxable income paid by him to any taxpayer if the amount of such income in any taxable year equals or exceeds $1,000. Exception is made in the case of income represented by interest coupons payable to bearer. (Section 366, subdivisions 2 and 3)

88. Should a non-resident taxpayer make a return of income withheld by a withholding agent?

Yes; income upon which any tax is required to be withheld at the source should be included in the return of the recipient of the income, but the tax withheld shall be credited against the amount of tax computed on such return. (Section 366, subdivision 4)

89. If a taxpayer changes from fiscal to calendar year or vice versa, are separate returns required for the partial year?

Yes, as provided in section 370, but such a change in the basis of computing " net income " cannot after the first year be made without the consent of the comptroller.

90. Will blanks be furnished upon which to render returns?

Yes; but failure to receive a form does not relieve a taxpayer from the obligation of rendering a return. (Section 371)

91. Will they resemble in form those prescribed by the United States commissioner of internal revenue?

Yes, so far as may be practicable. (Section 371)

92. What may the comptroller do if he believes a return is incorrect?

He may revise it and audit and state an account upon the return as revised and proceed to collect from the taxpayer additional taxes, penalties and interest. (Section 373)

93. What may the comptroller do if no return is filed?

He may examine or cause to have examined the books and records of any taxpayer and take testimony and proof material for his information. In addition, he may make an estimate of " taxable income " of such a taxpayer from any information in his possession and audit and state an account for the tax, penalties and interest due from the taxpayer. (Section 373)

94. What relief has a taxpayer if he has erred against his own interests in making a return or if the comptroller has erred in auditing and stating his account?

He may, within one year, make application for revision. The comptroller must grant a hearing on such an application and inform the taxpayer of his decision. If the taxpayer is not content with the comptroller's decision, he may review it by certiorari, but before making the application for a writ the taxpayer must furnish an undertaking. (Sections 374 and 375)

95. Will the contents of reports and returns be kept secret?

Yes. A severe penalty is prescribed if the comptroller or any officer, agent, clerk or employe divulges or makes known in any manner the amount of taxpayer's income or any of the particulars set forth in any report or return made, unless directed by a proper judicial order or in such other manner as may be provided by law. (Section 384)

96. Has the comptroller power to determine what facts shall be reported?

Yes; in addition to those named in the law, he may require such facts to be reported as may be necessary for the proper enforcement of the statute. (Section 371)

97. Must returns be verified by affidavits or affirmations of the persons rendering them?

Yes; to the effect that the statements contained therein are true. In the case of a fiduciary, the affidavit or affirmation shall be made to the effect that he has sufficient knowledge of the affairs of such individual, estate or trust to enable him to make the return, and that to the best of his knowledge and belief it is true and correct. (Sections 369 and 371)

PENALTIES

98. What penalty is provided for the failure to file the required return within the time provided?

(a) For such an omission one is guilty of a misdemeanor and may upon conviction be fined not to exceed $1,000 or imprisoned for no longer than a year, or both, at the discretion of the court.

(b) Furthermore, a taxpayer becomes subject to twice the ordinary rate of tax. (Section 376, subdivision 1)

99. What penalty is provided for making a false or fraudulent return with intent to evade the tax?

The same penalty is imposed as that stated in the last preceding answer.

100. What penalty attaches if one fails to pay the tax at the required time?

If one fails to pay his tax at the time required by or pursuant to law, he must pay in addition to the amount of such tax or part thereof, if it be an additional tax, 5 per cent of said amount plus 1 per cent for each month or fraction thereof that the tax or part thereof remains unpaid. (Section 379, subdivision 2)

101. May a taxpayer voluntarily make a return after having neglected or refused to do so within the required time?

Yes; he may make a correct return within sixty days, and in such a case there shall be added to the tax 5 per cent of the amount otherwise due, but such additional amount shall in no case be less than $2.00. (Section 376, subdivision 2)

POWERS OF COMPTROLLER

The duty of administering the income tax law is imposed upon the state comptroller. He is granted very broad powers. Put simply, he may do that which is necessary to be done to administer the law according to its purpose and intent, in respect of matters not specifically covered by the statute.

He is expressly enjoined (sections 356; 360, subdivisions 9, 10 and 11; 366, subdivisions 1 and 2; 369 and 371) to formulate rules and regulations covering features specifically enumerated, and authorized to make such others as he may deem necessary to enforce the act. (Section 383)

If a taxpayer neglects or refuses to pay a tax charged against him or his income, the comptroller may resort to any of the several means or methods of compelling payment stated in sections 380 and 381, or all of them in natural order.

CHAPTER 627

AN ACT to amend the tax law, in relation to imposing taxes upon and with respect to incomes.

Became a law May 14, 1919, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter sixty-two of the laws of nineteen hundred and nine, entitled "An act in relation to taxation, constituting chapter sixty of the consolidated laws," is hereby amended by adding a new article to be article sixteen, to read as follows:

ARTICLE 16.

TAXES UPON AND WITH RESPECT TO PERSONAL INCOMES.

Section 350. Definitions.
351. Imposition of income tax.
352. Exemption of certain personal property.
353. Ascertainment of gain and loss.
354. Exchange of property.
355. Gain through exchange.
356. Inventory.
357. Net income defined.
358. Computation of net income.
359. Gross income defined.
360. Deductions.
361. Items not deductible.
362. Exemptions.
363. Credit for taxes in case of taxpayers other than residents of the state.
364. Partnerships.
365. Estates and trusts.
366. Information and payment at source.
367. Taxpayers' returns.
368. Partnership returns.
369. Fiduciary returns.
370. Returns when accounting period changed.
371. Time and place of filing returns.
372. Administration of income tax law.
373. Powers of comptroller.
374. Revision and readjustment of accounts by comptroller.
375. Review of determination of comptroller by certiorari and regulations as to writ.
376. Penalties.
377. When payable.
378. Notice of assessment.

Section 350. **Definitions.** For the purpose of this article and unless otherwise required by the context:

1. The word " comptroller " means the state comptroller.

2. The word " taxpayer " includes any person, trust or estate subject to a tax imposed by this article or whose income is in whole or in part subject to a tax imposed by this article, and does not include corporations.

3. The words " military or naval forces of the United States " include the marine corps, the coast guard, the army nurse corps, female, and the navy nurse corps, female, but this shall not be deemed to exclude other units otherwise included within such words.

4. The words " taxable year " mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this article. The words " fiscal year " mean an accounting period of twelve months, ending on the last day of any month other than December.

5. The word " fiduciary " means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust or estate.

6. The word " paid " for the purposes of the deductions and credits under this article, means " paid or accrued " or " paid or incurred," and the terms " paid or incurred " and " paid or accrued " shall be construed according to the method of accounting upon the basis of which the net income is computed, under this article. The term " received " for the purpose of the computation of net income under this article, means " received or accrued " and the term " received or accrued " shall be construed according to the method of accounting upon the basis of which the net income is computed under this article.

7. The word " resident " applies only to natural persons and includes for the purpose of determining liability to the tax imposed by this article upon or with reference to the income of any taxable year, commencing with the year nineteen hundred and nineteen, any person who shall, at any time on or after January first and not later than March fifteenth of the next succeeding calendar year, be or become a resident of the state.

8. The word " dividend " means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation.

9. The words " foreign country " or " foreign government " mean any jurisdiction other than one embraced within the United States. The words " United States " include the states, the territories of Alaska and Hawaii and the District of Columbia.

10. The words " withholding agent " include all individuals, corporations, associations and partnerships, in whatever capacity acting, including lessees, or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state, or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal or payment, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits and income taxable under this article.

§ 351. **Imposition of income tax.** A tax is hereby imposed upon every resident of the state, which tax shall be levied, collected and paid annually upon and with respect to his entire net income as herein defined at rates as follows: One per centum of the amount of net income not exceeding ten thousand dollars; two per centum of the amount of net income in excess of ten thousand dollars but not in excess of fifty thousand dollars; three per centum of the amount of net income in excess of fifty thousand dollars. A like tax is hereby imposed and shall be levied, collected and paid annually, at the rates specified in this section, upon and with respect to the entire net income as herein defined, except as hereinafter provided, from all property owned and from every business, trade, profession or occupation carried on in this state by natural persons not residents of the state. Such tax shall first be levied, collected and paid in the year nineteen hundred and twenty upon and with respect to the taxable income for the calendar year nineteen hundred and nineteen, or for any taxable year ending during the year nineteen hundred and nineteen.

§ 352. **Exemption of certain personal property from taxation.** The taxes imposed by this article are in addition to all other taxes imposed by law, except that money on hand, on deposit or at interest, bonds, notes and choses in action and shares of stock in corporations other than banks and banking associations, owned by any individual or constituting a part of a trust or estate subject to the income tax imposed by this article, and from which any income is derived, shall not after July thirty-first, nineteen hundred and nineteen, be included in the valuation of the personal property included in the assessment-rolls of the several tax districts, villages, school districts and special tax districts of the state.

§ 353. **Ascertainment of gain and loss.** For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal or mixed, the basis

shall be first, in case of property acquired before January first, nineteen hundred and nineteen, the fair market price or value of such property as of January first, nineteen hundred and nineteen, and, second, in case of property acquired on or after that date, the cost thereof; or the inventory value, if the inventory is made in accordance with this article.

§ 354. **Exchange of property.** When property is exchanged for other property, the property received in exchange shall for the purpose of determining gain or loss be treated as the equivalent of cash to the amount of its fair market value, if any; but when in connection with the reorganization, merger or consolidation of a corporation a taxpayer receives, in place of stock or securities owned by him, new stock or securities of no greater aggregate par or face value, no gain or loss shall be deemed to occur from the exchange, and the new stock or securities received shall be treated as taking the place of the stock, securities or property exchanged.

§ 355. **Gain through exchange.** When in the case of any such reorganization, merger or consolidation the aggregate par or face value of the new stock or securities received is in excess of the aggregate par or face value of the stock or securities exchanged, a like amount in par or face value of the new stock or securities received shall be treated as taking the place of the stock or securities exchanged, and the amount of the excess in par or face value shall be treated as a gain to the extent that the fair market value of the new stock or securities is greater than the cost of the stock or securities exchanged, if acquired on or after January first, nineteen hundred and nineteen, and its fair market price or value as of January first, nineteen hundred and nineteen, if acquired before that date.

§ 356. **Inventory.** Whenever in the opinion of the comptroller the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the comptroller may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income, and conforming so far as may be to the forms and methods prescribed by the United States commissioner of internal revenue under the act of congress known as the revenue act of nineteen hundred and eighteen.

§ 357. **Net income defined.** The term "net income" means the gross income of a taxpayer less the deductions allowed by this article.

§ 358. **Computation of net income.** 1. The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year as the case may be) in accordance with method of accounting regularly employed in keep-

ing the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the comptroller does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in this article, or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

2. If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the comptroller, be computed on the basis of such new accounting period, subject to the provisions of section three hundred and seventy.

§ 359. **Gross income defined.** The term " gross income ":

1. Includes gains, profits and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the methods of accounting permitted in this article, any such amounts are to be properly accounted for as of a different period; but

2. Does not include the following items which shall be exempt from taxation under this article:

a. The proceeds of life insurance policies and contracts paid upon the death of the insured to individual beneficiaries or to the estate of the insured.

b. The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

c. The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).

d. Interest upon the obligations of the United States or its possessions; or securities issued under the provisions of the federal farm loan act of July seventeen, nineteen hundred and sixteen; or bonds issued by the war finance corporation; or the obligations of the state of New York or of any municipal corporation or political subdivision thereof; or investments upon which the tax provided for in section three hundred and thirty one of this

chapter has heretofore been paid since June first, nineteen hundred and seventeen, during the period of years for which such tax shall have been paid.

e. Any amount received through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness, or through the war risk insurance act or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States.

f. Salaries, wages and other compensation received from the United States of officials or employees thereof, including persons in the military or naval forces of the United States.

g. Income received by any officer of a religious denomination or by any institution, or trust, for moral or mental improvement, religious, bible, tract, charitable, benevolent, fraternal, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes, or for the enforcement of laws relating to children or animals, or for two or more of such purposes, if such income be used exclusively for carrying out one or more of such purposes; but nothing herein shall be construed to exempt the fees, stipends, personal earnings or other private income of such officer or trustee.

3. In the case of taxpayers other than residents, gross income includes only the gross income from sources within the state, but shall not include annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations or dividends from corporations, except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state subject to taxation under this article.

§ 360. **Deductions.** In computing net income there shall be allowed as deductions:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

2. In the case of a resident of the state such a proportion of the total interest paid or accrued during the taxable year on indebtedness, as the net income of the taxpayer taxable under this article bears to his total income from all sources; or in case of an individual not a resident of the state, the same proportion of interest paid or accrued within the taxable year on indebtedness which the amount of such gross income, as herein defined, bears to the gross amount of his income from all sources within and without the state.

3. Taxes other than income taxes paid or accrued within the taxable year imposed, first, by the authority of the United States, or of any of its possessions, or, second, by the authority of any state, or territory, or any county, school district, municipality, or other taxing subdivision of any state or territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed, or, third, by the authority of any foreign government.

4. Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or business.

5. Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with the trade or business; but in the case of a taxpayer other than a resident of the state, only as to such transactions within the state.

6. Losses sustained during the taxable year of property not connected with the trade or business (but, in the case of a taxpayer other than a resident, only of property within the state) if arising from fires, storms, shipwrecks, or other casualty or from theft, and not compensated for by insurance or otherwise.

7. Debts ascertained to be worthless and charged off within the taxable year.

8. A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence.

9. In the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost including cost of development not otherwise deducted; provided, that in the case of such properties acquired prior to January first, nineteen hundred and nineteen, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date; provided, further, that in the case of mines, oil and gas wells, discovered by the taxpayer on or after January first, nineteen hundred and nineteen, and not acquired as the result of a purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery or within thirty days thereafter: such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the comptroller. In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee.

10. Contributions or gifts made within the taxable year to corporations incorporated by, or associations organized under, the laws of this state and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures

to the benefit of any private stockholder or individual, or to the special fund for vocational rehabilitation authorized by section seven of the act of congress known as the vocational rehabilitation act, to an amount not in excess of fifteen per centum of the taxpayer's net income as computed without the benefit of this subdivision. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the comptroller. In the case of a taxpayer other than a resident of the state this deduction shall be allowed only as to contributions or gifts made to corporations or associations incorporated by or organized under the laws of this state or to the vocational rehabilitation fund above mentioned.

11. In the case of a taxpayer other than a resident of the state the deductions allowed in this section shall be allowed only if, and to the extent that, they are connected with income arising from sources within the state; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the state shall be determined under rules and regulations to be prescribed by the comptroller.

§ 361. **Items not deductible.** In computing net income no deduction shall in any case be allowed in respect of:

1. Personal, living, or family expenses;

2. Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

3. Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or

4. Premiums paid on any life insurance policy, covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

§ 362. **Exemptions.** The following exemptions shall be allowed to any resident taxpayer:

1. In the case of a single person, a personal exemption of one thousand dollars, or in the case of the head of a family or a married person living with husband or wife, a personal exemption of two thousand dollars. A husband and wife living together shall receive but one personal exemption of two thousand dollars against their aggregate net income; and in case they make separate returns the personal exemption of two thousand dollars may be taken by either or divided between them.

2. Two hundred dollars for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer, if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

3. A taxpayer receiving salary, wages, or other compensation from the United States as an official thereof, exempt from taxation under this article, shall be entitled to only so much of the personal exemption provided for in this section as is in excess of the aggregate amount of such salaries, wages, or other compensation.

§ 363. **Credit for taxes in case of taxpayers other than residents of the state.** Whenever a taxpayer other than a resident of the state has become liable to income tax to the state or country where he resides upon his net income for the taxable year, derived from sources within this state and subject to taxation under this article, the comptroller shall credit the amount of income tax payable by him under this article with such proportion of the tax so payable by him to the state or country where he resides as his income subject to taxation under this article bears to his entire income upon which the tax so payable to such other state or country was imposed; provided that such credit shall be allowed only if the laws of said state or country grant a substantially similar credit to residents of this state subject to income tax under such laws.

§ 364. **Partnerships.** Individuals carrying on business in partnerships shall be liable for income tax only in their individual capacity. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships may be required by the comptroller to make a return stating the gross receipts and net gains or profits of the partnership for any taxable year. The net income of the partnership shall be computed in the same manner and on the same basis as provided in computing the net income of individuals except that the deduction provided in subdivision ten of section three hundred and sixty shall not be allowed and the personal exemptions provided for in section three hundred and sixty-two shall be allowed only to the individual partners.

§ 365. **Estates and trusts.** 1. The tax imposed by this article shall apply to the income of estates or of any kind of property held in trust, including:

a. Income received by estates of deceased persons during the period of administration or settlement of the estate;

b. Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

c. Income held for future distribution under the terms of the will or trust; and

d. Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct.

2. The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in this article for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid to or permanently set aside for the United States, any state, territory, or any political subdivision thereof, or the District of Columbia, or any corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual; and in cases under paragraph d of subdivision one of this section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

3. In cases under paragraphs a, b, and c of subdivision one, of this section, the tax shall be imposed upon the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary. In such cases, the estate or trust shall be allowed the same exemptions as are allowed to single persons under section three hundred and sixty-two, and in such cases an estate or trust created by a person not a resident and an estate of a person not a resident shall be subject to tax only to the extent to which individuals other than residents are liable under section three hundred and fifty-nine, subdivision three.

4. In cases under paragraph d of sudbivision one of this section and in the case of any income of an estate during the period of administration or settlement permitted by subdivision three to be deducted from the net income upon which tax is to be paid by the fiduciary, the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share whether distributed or not, of the net income of the estate or trust for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such

estate or trust ending within the fiscal or calendar year upon the basis of which such beneficiary's net income is computed. In such cases the income of a beneficiary of such estate or trust not a resident shall be taxable only to the extent provided in section three hundred and fifty-nine, subdivision three, for individuals other than residents.

§ 366. **Information and payment at source.** 1. Every withholding agent shall deduct and withhold two per centum from all salaries, wages, commissions, gratuities, emoluments, perquisites and other fixed and determinable annual or periodical compensation of whatever kind and in whatever form paid or received, earned for personal services and taxable under this article, of which he shall have control, receipt, custody, disposal or payment, if the amount paid or received or to be paid or received in any taxable year on account of any individual equals or exceeds one thousand dollars, unless there shall be filed with the withholding agent, before the time when he is required to make return and payment thereof, a certificate in such form as shall be prescribed by the comptroller to the effect that the person entitled to such salary, wage, commission, gratuity, emolument, perquisite or other compensation is a resident and setting forth his residence address within the state.

2. Every withholding agent shall make return to the comptroller of complete information concerning the amount of all interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits and income, except interest coupons payable to bearer, of any taxpayer taxable under this article of one thousand dollars or more in any taxable year under such regulations and in such form and manner and to such extent as may be prescribed by the comptroller.

3. Every withholding agent required to deduct and withhold any tax under subdivision one of this section shall make return thereof on or before the fifteenth day of March in each year and shall at the same time pay the tax to the comptroller. Every such individual, corporation or partnership is hereby made liable for such tax and is hereby indemnified against the claims and demands of any individual, corporation or partnership for the amount of any payments made in accordance with the provisions of this section.

4. Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

5. If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be recollected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

§ 367. **Taxpayers' returns.** Every taxpayer having a net income for the taxable year of one thousand dollars or over if single or if married and not living with husband or wife, or of two thousand dollars or over if married and living with husband or wife, shall make under oath a return stating specifically the items of his gross income and the deductions and credits allowed by this article. If a husband and wife living together have an aggregate net income of two thousand dollars or over, each shall make such a return unless the income of each is included in a single joint return. If the taxpayer is unable to make his own return the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer. A taxpayer other than a resident shall not be entitled to the deductions authorized by section three hundred and sixty unless he shall make under oath a complete return of his gross income both within and without the state.

§ 368. **Partnership returns.** Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this article, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

§ 369. **Fiduciary returns.** Every fiduciary (except receivers appointed by authority of law in possession of part only of the property of a taxpayer) shall make under oath a return for the taxpayer for whom he acts, first, if the net income of such taxpayer is one thousand dollars or over if single, or if married and not living with husband or wife, or two thousand dollars or over if married and living with husband or wife, or second, if the net income of such taxpayer, if an estate or trust, is one thousand dollars or over or if any beneficiary is a taxpayer other than a resident of the state, which return shall state specifically the items of the gross income and the deductions, exemptions and credits allowed by this article. Under such regulations as the comptroller may prescribe, a return made by one of two or more joint fiduciaries and filed in the office of the comptroller or collector in the district where such fiduciary resides shall be a sufficient compliance with the above requirement. The fiduciary shall make oath that he has sufficient knowledge of the affairs of such individual, estate or trust to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct.

Fiduciaries required to make returns under this article shall be subject to all the provisions of this article which apply to taxpayers.

§ 370. **Returns when accounting period changed.** If a taxpayer, with the approval of the comptroller, changes the basis

of computing net income from fiscal year to calendar year, a separate return shall be made for the period between the close of the last fiscal year for which return shall be made for the period between the close of the last fiscal year for which return was made and the following December thirty-first. If the change is made from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the last fiscal year. If the change is from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. If a taxpayer making his first return for income tax keeps his accounts on the basis of a fiscal year, he shall make a separate return for the period between the beginning of a calendar year in which such fiscal year ends and the end of such fiscal year.

In all of the above cases the net income shall be computed on the basis of such period for which separate return is made, and the tax shall be paid thereon at the rate for the calendar year in which such period is included; and the exemptions allowed in this article shall be reduced respectively to amounts which bear the same ratio to the full exemptions provided for as the number of months in such period bears to twelve months.

§ 371. **Time and place of filing returns.** Returns shall be made to the comptroller on or before the fifteenth day of March in each year of the taxpayer's net income for his last preceding taxable year. The comptroller may grant a reasonable extension of time for filing returns whenever in its judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of taxpayers who are abroad no such extension shall be granted for more than six months. Such returns shall, so far as may be, set forth the same or similar items called for in the blank forms of return prescribed by the United States commissioner of internal revenue for the enforcement of the act of congress known as the revenue act of nineteen hundred and eighteen, together with such other facts as the comptroller may deem necessary for the proper enforcement of this article. There shall be annexed to such return the affidavit or affirmation of the person making the return, to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the comptroller upon application, but failure to secure the form shall not relieve any taxpayer from the obligation of making any return herein required.

§ 372. **Administration of income tax law.** The comptroller shall administer and enforce the tax herein imposed for which purpose he may divide the state into districts in each of which a branch office of the comptroller may be maintained; provided that in no cases shall a county be divided in forming district.

§ 373. **Powers of comptroller.** If in the opinion of the comptroller any return of a taxpayer is in any essential respect incorrect he shall have power to revise such return, or if any taxpayer fails to make return as herein required, the comptroller is authorized to make an estimate of the taxable income of such taxpayer from any information in his possession, and to audit and state an account according to such revised return or the estimate so made by him for the taxes, penalties and interest due the state from such taxpayer. The comptroller shall also have power to examine or cause to have examined, in case of failure to report the books and records of any such taxpayer, and may take testimony and require proof material for his information.

§ 374. **Revision and readjustment of accounts by comptroller.** If an application for revision be filed with the comptroller by a taxpayer within one year from the time of the filing of the return, or if the tax of such taxpayer shall have been recomputed, then from the time of such recomputation, the comptroller shall grant a hearing thereon and if it shall be made to appear, upon any such hearing by evidence submitted to him or otherwise, that any such computation includes taxes or other charges which could not have been lawfully demanded, or that payment has been illegally made or exacted of any such amount so computed, the comptroller shall resettle the same according to law and the facts, and adjust the computation of taxes accordingly, and shall send notice of his determination thereon to the taxpayer.

§ 375. **Review of determination of comptroller by certiorari and regulations as to writ.** The determination of the comptroller upon any application made to him by any taxpayer for revision and resettlement of any computation of tax, as prescribed by this article, may be reviewed in the manner prescribed by and subject to the provisions of section one hundred and ninety-nine of this chapter. No certiorari to review any statement of a computation or any determination by the comptroller under this article shall be granted unless notice of application therefor is made within thirty days after the service of the notice of such determination. Eight days' notice shall be given to the comptroller of the application for such writ. Before making the application an undertaking must be filed with him, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such writ is dismissed or the determination of the comptroller affirmed, the applicant for the writ will pay all costs and charges which may accrue against him in the prosecution of the writ, including costs of all appeals.

§ 376. **Penalties.** 1. Any person required by this article to make, render, sign or verify any return, who fails to make, render, sign or verify such return within the time required by or under a provision of law, or who makes any false or fraudulent return or statement, with intent to evade any tax imposed

by this article, shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars, or be imprisoned not to exceed one year, or both, at the discretion of the court.

2. If any such person shall fail or refuse to make a return of income at the time or times hereinbefore specified, but shall voluntarily make a correct return of income within sixty days thereafter, there shall be added to his tax five per centum of the amount otherwise due, but such additional amount shall in no case be less than two dollars.

3. If any person liable to taxation under this article fails to make a return as herein required, the amount of income of such person discovered to be taxable shall be subject to twice the ordinary rate of taxation. If any person liable to taxation under this article makes any false or frauduent return or statement, with intent to evade any tax imposed by this article, and an additional amount is discovered to be taxable, such additional amount shall be subject to twice the ordinary rate of taxation. Such tax shall be collected at such time and in such manner as may be designated by the comptroller. This penalty shall be additional to all other penalties in this or any other section provided.

§ 377. **When payable.** 1. Each taxpayer shall, at the time of filing his return, pay to the comptroller the amount of tax payable hereunder as the same shall appear from the face of the return. If the time for filing the return shall be extended, he shall pay in addition interest thereon at the rate of six per centum per annum from the time when the return was originally required to be filed to the time of payment.

2. As soon as practicable after the return is filed, the comptroller shall examine it and compute the tax.

3. If the amount of tax as computed shall be greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the comptroller within thirty days after the amount of the tax as computed shall be mailed by the comptroller.

4. If the amount of tax as computed shall be less than the amount theretofore paid, the excess shall be refunded by the comptroller out of the proceeds of the tax retained by him as provided in this article.

§ 378. **Notice of assessment.** Notice of tax assessment shall be sent by mail to the post office address given in the report, and the record that such notice has been sent shall be presumptive evidence of the giving of the notice and such record shall be preserved by the comptroller.

§ 379. **Collection of taxes; penalties and interest.** 1. The comptroller is authorized at his discretion to designate agents for the purpose of collecting income taxes and shall require from them reasonable bond.

2. If the tax imposed by this article or any part of such tax be not paid at the time when required to be paid under the provisions of this article or in the case of additional taxes, at the time designated by the comptroller, the taxpayer liable to pay such tax shall pay to the comptroller, in addition to the amount of such tax, or part thereof, five percentum of said amount, plus one per centum for each month, or fraction of a month, the tax, or part thereof, remains unpaid.

§ 380. **Warrant for the collection of taxes.** If any tax imposed by this article or any portion of such tax be not paid within sixty days after the same becomes due, the comptroller shall issue a warrant under his hand and official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the comptroller and pay to him the money collected by virtue thereof by a time to be therein specified, not less than sixty days from the date of the warrant. The sheriff shall within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the comptroller a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the comptroller shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

§ 381. **Action for recovery of taxes.** Action may be brought at any time by the attorney-general of the state at the instance

of the comptroller, in the name of the state to recover the amount of any taxes, penalties and interest due under this article.

§ 382. **Distribution of the income tax.** Of the revenue collected under this article the comptroller shall retain in his hands sufficient to provide at all times a fund in his hands in the sum of two hundred and fifty thousand dollars out of which he shall pay any refunds to which taxpayers shall be entitled under the provisions of this article. Of the remainder, fifty per centum shall be paid into the state treasury to the credit of the general fund. The remaining fifty per centum thereof shall, not later than the first day of July, and in case of moneys subsequently collected at least quarterly thereafter, be distributed and paid to the treasurers of the several counties of the state, in the proportion that the assessed valuation of the real property of each county bears to the aggregate assessed valuation of the real property of the state. As to any county included in the city of New York such payment shall be made to the receiver of taxes in such city and be paid into the general fund for the reduction of taxation of the city of New York. The county treasurer shall apportion the amount so received among the several towns and cities within the county in proportion that the assessed valuation of the real property of each town or city bears to the aggregate assessed valuation of the real property of the county, and shall credit the amount apportioned to each town against the county tax payable by it, and shall pay the amount apportioned to each city to the chief fiscal officer of the city to be paid into the general fund for city purposes. If the amount of the credit to a town exceeds the county tax from such town, the excess shall be paid to the supervisor of the town and be by him credited to general town purposes.

§ 383. **Comptroller to make regulations and to collect facts.** The comptroller is hereby authorized to make such rules and regulations, and to require such facts and information to be reported, as it may deem necessary to enforce the provisions of this article.

§ 384. **Secrecy required of official; penalty for violation.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the comptroller, any agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this article. Nothing herein shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney-general or other legal representatives of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted in accordance with the

rovisions of sections three hundred and eighty and three hun-ired and eighty-one of this chapter. Reports and returns shall e preserved for three years and thereafter until the comptroller rders them to be destroyed.

2. Any offense against subdivision one of this section shall be unished by a fine not exceeding one thousand dollars or by nprisonment not exceeding one year, or both, at the discretion f the court, and if the offender be an officer or employee of the tate he shall be dismissed from office and be incapable of hold-ng any public office in this state for a period of five years there-fter.

§ 385. **Contract to assume income tax illegal.** It shall be nlawful for any person to agree or contract directly or in-irectly to pay or assume or bear the burden of any tax payable y any taxpayer under the provisions of this article. Any ach contract or agreement shall be null and void and shall not e enforced or given effect by any court.

§ 2. If any clause, sentence, paragraph, or part of this act hall for any reason be adjudged by any court of competent risdiction to be invalid, such judgment shall not affect, impair, r invalidate the remainder of this act, but shall be confined in s operation to the clause, sentence, paragraph, or part thereof irectly involved in the controversy in which such judgment hall have been rendered.

§ 3. An assessment on account of personal property made rior to August first, nineteen hundred and nineteen, shall be s valid and effectual as if this act had not been passed, and othing in this act shall be construed to impair the obligation to ay taxes assessed on account of personal property in the year ineteen hundred and eighteen or the year nineteen hundred nd nineteen prior to August first whether payable in that year r not.

§ 4. If in any city entitled to receive a portion of the taxes ollected under article sixteen of the tax law as added by this act e budget for the fiscal year current on July first, nineteen hun-red and twenty, shall be completed prior to that date, the board f estimate and apportionment or other board or body having the uty of preparing the budget in such city shall have the power ubsequent to such date and before the levy of the taxes on account f the appropriations made by such budget to revise the estimates of ty revenue so as to include in such calculation the income to the ty from taxes collected under article sixteen of the tax law as dded by this act.

§ 5. The sum of three hundred thousand dollars ($300,000), r so much thereof as may be needed, is hereby appropriated out f any money in the treasury, not otherwise appropriated, for the dministration of article sixteen of the tax law as added by this ct, but any position established or salary fixed for such purpose hall be deemed temporary only and subject to the future action of

the legislature but no new position shall be created nor salary fixed except on the unanimous approval of the governor, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

§ 6. Except as otherwise provided herein this act shall take effect immediately.

INDEX

STATE OF NEW YORK
OFFICE OF STATE COMPTROLLER
ALBANY, N. Y.

DEDUCTING AND WITHHOLDING AT SOURCE

Rules and Regulations of the State Comptroller, in Relation to Taxes Imposed Upon and With Respect to Incomes by Chapter 627 of the Laws of 1919

FOREWORD

The following regulations, articles 261 to 269, relative to deducting and withholding at source, are promulgated in advance of the formulation of a complete set of rules and regulations because of the immediate importance of the subject.

Eugene M. Travis
Comptroller.

June 11, 1919.

DEDUCTING AND WITHHOLDING AT SOURCE

Art. 261. **Deducting and withholding tax at source.** Under the opinion of the Attorney-General (Income Tax Letter No. 1, May 29, 1919), deducting and withholding is required of one per cent. (1%) on the first $10,000 and of two per cent. (2%) on all sums in excess of $10,000 from all salaries, wages, commissions, gratuities, emoluments, perquisites and other fixed and determinable annual or periodical compensation earned for personal services in a business, trade, profession or occupation carried on within the State, if the aggregate amount thereof in any calendar year on account of any individual equals or exceeds $1,000, unless there shall be filed with the withholding agent a certificate of residence, on Form 101, to the effect that the recipient is a resident of the State and setting forth his residence address within the State.

Art. 262. **Deducting and withholding in 1919.** Withholding agents shall deduct and withhold, as set forth in Article 261, in respect of personal service compensation paid or credited to the payee at any time on or after January 1, 1919, except that if the employee left the service of the withholding agent prior to May 14, 1919 (the date of the enactment of chapter 627 of the Laws of 1919), *and was fully paid prior to that date,* no duty or obligation in respect to such payments rests on the withholding agent, unless the status of employer and employee is again created during 1919 and further payments of compensation for personal services are made or credited in 1919. In other words, the provisions for deducting and withholding are effective from January 1, 1919, except as stated in this article.

Art. 263. **Fixed or determinable annual or periodical income.** Only income earned for personal services is subject to deducting and withholding. The statute specifies that every withholding agent shall deduct from all salaries, wages, commissions, gratuities, emoluments and perquisites. But other kinds of personal service income may be included if fixed or determinable, annual or periodical. Income is fixed when it is to be paid in amounts definitely predetermined. It is determinable whenever there is a basis of calculation by which the amount to be paid may be

ascertained. The income need not be paid annually or at an annual rate. It may be paid periodically. The word "periodical" is used in opposition to "annual" and means from time to time, whether or not at regluar intervals. That the length of time during which the payments are to be made may be increased or diminished in accordance with someone's will or with the happening of an event, does not make the payments any the less determinable or periodical.

The following shall be deemed to be fixed and determinable annual or periodical compensation within the meaning of section 360 of the Tax Law:

Any payment made by way of salary, wage, commission, gratuity, emolument, perquisite or otherwise for personal services rendered, if the amount thereof shall be

(a) determined prior to, concurrent with or subsequent to the rendering of the service, and is

(b) based on personal services rendered by the hour, week, month, year or other period of time,

whether such personal service consists of

(c) the performance of specified or unspecified duties, or of

(d) work done on or in connection with one or more of certain articles or parts thereof:

irrespective of whether payment be made

(e) in cash,

(f) in board or lodging, or both,

(g) in the stock of a corporation,

(h) by promissory note or other obligation, or

(i) in property, service or otherwise.

If payment shall be made otherwise than in cash, it shall be considered and treated as payment in cash to the fair market value (determinable usually by understanding or agreement existing between the payor and the payee) of such medium, other than cash, as may be employed.

Fees for professional services are not subject to withholding unless contracted for or paid on an annual or periodical basis.

Art. 264. **Year, for purposes of deducting and withholding.** Deducting and withholding of personal service compensation by withholding agents shall be on the basis of a calendar year, irre-

spective of the basis of reporting adopted by the payee-taxpayer. Personal service compensation shall be deemed to have been paid by the withholding agent and received by the payee-taxpayer only if and to the extent actually paid or credited to the payee and thus made reducible to possession by him. Commissions and all other forms of personal service compensation determined and paid or credited to a payee-taxpayer after the close of a calendar year, shall, for the purpose of deducting and withholding the tax and of returning information with respect thereto, be treated as payments made in the calendar year when paid or credited, but for such purposes only. The approved method of accounting employed by the payee-taxpayer shall govern in so far as he may be called upon to account for such payments for income tax purposes.

Art. 265. **Income not subject to deducting and withholding.** Deducting and withholding from income is not required in the following cases:

(a) In respect of personal service compensation income when there shall have been filed with the withholding agent a resident's certificate on Form 101, to the effect that the person receiving the compensation is a resident of this State and setting forth his residence address within the State.

(b) If of a character other than compensation for personal services.

(c) Where the personal services are rendered entirely without the State, by a nonresident, whether payment be made from within or without the State, irrespective of the status of the withholding agent. The occasional entry into the State of a nonresident employee who performs the duties for which he is employed entirely without the State, but enters the State for the purpose of reporting, receiving instructions, accounting, etc., incidental to his duties without the State, shall not be deemed to take such employee out of the class of those rendering their services entirely without the State.

(d) Where the personal services are rendered within the State, if rendered for, and delivery of payment is made

without the State by, a nonresident individual or partnership having no office or place of business or paying agent within the State, or a foreign corporation that (1) is not registered in New York and (2) has no office or place of business or paying agent within the State. (Nothing in sub-paragraph "d" shall be construed to relieve the *recipient* from liability to make return and pay the tax on such income.)

Art. 266. **Income of a nonresident for services performed partly within and partly without the State.** In case a nonresident receives compensation for personal services rendered or performed partly within and partly without the State, the withholding agent shall deduct and withhold on the entire amount of compensation, as set forth in Article 261, unless the withholding agent files with the Comptroller, with his return (Form 103) of sums deducted and withheld, a certificate on Form 102, setting forth

(1) that the employee is a nonresident (stating his address);
(If the withholding agent has not personal knowledge of the place of residence of the employee, he may state it upon information and belief, provided he submits with his certificate the affidavit of the employee stating such residence.)

(2) that part only of the payments made were for services performed within the State, and

(3) the amount in dollars and cents of such part. If brought into question, the burden of proof will be on the withholding agent to show that no greater portion than that set forth in his affidavit of the payments made was for services performed in this State.

In apportioning such income of a nonresident, the following rules shall be observed by the withholding agent:

(a) If the nonresident is a salesman, drummer, agent or other employee through whose services receipts or remuneration inure directly to the employer, the deducting and withholding shall attach to the portion of the entire salary which the volume of business transacted by the employee within the State of New York bears to the total volume of business transacted within and without the State by such employee.

(b) If the nature of the employment of the nonresident is such that receipts or remuneration for services rendered do not inure directly to the employer, as in the case of clerks, bookkeepers, laborers or other like classes of employees, the deducting and withholding shall attach to the portion of the personal service compensation income of such employee which the time employed within the State bears to the time employed both within and without the State.

(c) If it is not possible to apportion the income as above provided, because of the peculiarities of the service of the employee, the apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly. In such a case a full statement of the facts shall be made to the Comptroller.

Art. 267. **Form of residence certificate.** Form 101 shall be used by residents of the State of New York for the purpose of claiming the benefit of such residence for income tax purposes. Withholding agents shall retain, preserve and keep available for examination and inspection by the Comptroller or his authorized representative all residence certificates for a period of one year next following the close of the calendar year for which such certificates shall have been given. Blanks (Form 101) will be furnished by the Comptroller on the application of withholding agents. Withholding agents may, if they choose to do so, use blanks acquired from other sources, provided, however, that the form and wording thereof shall comply exactly with Form 101.

Art. 268. **Revocation and renewal of residence certificates.** An employee who has filed a certificate of residence on Form 101, and who thereafter changes his residence, shall notify his employer of such change. Any employer who has reasonable ground for believing that an employee has changed his residence, after notice to the employee, may revoke the certificate of residence theretofore filed by such employee, and, in default of a new certificate of residence, shall deduct and withhold from the compensation of such employee for the entire calendar year, as provided in Article 261.

A certificate of residence shall be effective only for the calendar year in which it is filed.

Art. 269. **Deducting and withholding where residence is established.** When a withholding agent shall have deducted and withheld from the personal service compensation of an employee and such employee shall thereafter, before return of the amount so withheld is made by the withholding agent but not later than March 15 in the year following, file with the withholding agent a residence certificate on Form 101, the withholding agent shall thereupon pay over to the employee the entire amount of income so deducted and withheld for such calendar year.

Pursuant to the authority conferred by chapter 627 of the Laws of 1919, the foregoing regulations (Articles 261–269, inclusive) in relation to "Deducting and Withholding at Source", are hereby made and promulgated.

Eugene M. Travis

Comptroller.

ALBANY, N. Y., *June* 11, 1919.

Form 101

NEW YORK STATE INCOME TAX

EUGENE M. TRAVIS, *State Comptroller*

9-6-19-100,000

THIS CERTIFICATE HAS NO EFFECT ON CITIZENSHIP OR VOTING RESIDENCE

CERTIFICATE OF TAXPAYER CLAIMING RESIDENCE IN THE STATE OF NEW YORK

(To be filed with withholding agent by resident of New York State, pursuant to section 366 of the tax law, for the purpose of claiming the benefit of such residence for income tax purposes.)

To..
(Withholding agent)

....
(Address)

I hereby declare that I am a resident of the state of New York; that I reside at..................................
(Street and number)

....N. Y., that I have no definite intention as to when (if at all)
(City, town or village) (County)

I will establish my home without the state; and that if I decide to establish my home without the state, or at another place within the state, I will promptly give you notice of that fact and of my new residence address.

(Signed)..

57 [Endorsed:] E. 16-153. District Court of the U. S. Southern D'strict of New York. The Yeale & Towne Manufacturing Company, Complainant, vs. Eugene M. Travis, Comptroller of the State of New York, Defendant. Bill of Complaint. Archibald Cox, Solicitor for Complainant, 233 Broadway, Borough of Manhattan, City of New York. Filed July 2, 1919.

58 District Court of the United States for the Southern District of New York.

THE YALE & TOWNE MANUFACTURING COMPANY, Complainant,
against
EUGENE M. TRAVIS, as Comptroller of the State of New York, Defendant.

SIRS:

Please take notice that the defendant herein moves to dismiss the bill of complaint in this suit verified July 1st, 1919, for the following reason:

That the complainant has not in and by said bill made or stated such a cause as does or ought to entitle it to any such relief as is thereby sought and prayed for from or against this defendant.

Dated, Albany, N. Y., July 7, 1919.

Yours, &c.,

CHARLES D. NEWTON,
Attorney-General of the State of New York and Solicitor for Defendant; Office & Post Office Address, Capitol, Albany, N. Y.

To Archibald Cox, Esq., Solicitor for Complainant; Alex. Gilchrist, Jr., Esq., Clerk.

9 [Endorsed:] 15197. Eq. 16-153. District Court of U. S. Southern District of New York. The Yale & Towne Manufacturing Company, Complainant, against Eugene M. Travis, as Comptroller, Etc., Defendant. Copy Notice of Motion to Dismiss Bill of Complaint.. Charles D. Newton, Attorney-General, Attorney for Def't, Office & P. O. Add., Capitol, Albany, N. Y. Personal service of a copy of within notice is admitted this 8th day of July, 1919. Archibald Cox, Compl't's Sol'r. Filed July 9, 1919.

0 Filed Aug. 6, 1919.

District Court of the United States, Southern District of New York.

In Equity. E. 16-153.

THE YALE AND TOWNE MANUFACTURING COMPANY, Complainant,
vs.
EUGENE M. TRAVIS, Comptroller of the State of New York, Defendant.

Upon motion to dismiss the bill upon the ground that it does not state a cause entitling the complainant to the relief sought.

Motion denied.

Louis H. Porter and Archibald Cox (F. Carroll Taylor with them on the brief), for Complainant.

James Y. Ivins, Deputy Attorney General of the State of New York, for Defendant. (No brief was submitted upon behalf of the defendant.)

The complainant, a Connecticut corporation, has its plant and principal business place at Stamford, Connecticut. It is authorized to do business in this State, where it maintains an office, owns property and employs numerous residents of other States, to wit, of New Jersey and Connecticut, who are occupied in whole or in part in the complainant's business within this State. A number of complainant's employees, who are non-residents of New York, perform substantially all of their services at the New York office, and their salaries are paid at stipulated times in the City of New York from
61 funds of the complainant within the State. Still other employees similarly situated have their salaries paid to them by checks sent by mail from the home office to such employees in New York. Still other non-resident employees are occupied in services which are rendered partly in Connecticut and partly in New York, some spending relatively little time in Connecticut and vice-versa, the amount of time spent in each place depending upon circumstances. The complainant also employs certain non-residents as traveling salesmen, who spend their time in New York and in traveling through other states.

The number of employees occupied as above set forth, whose salaries are in excess of $1,000 per annum, exceed fifty in number and their total salaries are in excess of $200,000.

Upon May 14, 1919, what is known as "Chapter 627 of the Laws of 1919" and entitled "An Act to amend the tax law, in relation to imposing taxes upon and with respect to incomes" became a law of this State.

Section 351 of the Act provides:—

"A tax is hereby imposed upon every resident of the state, which tax shall be levied, collected and paid annually upon and with respect to his entire net income as herein defined at rates as follows": 1% on amounts not exceeding $10,000, 2% upon amounts in excess of $10,000 and not in excess of $50,000, and 3% on amounts in excess of $50,000.

The section continues, "A like tax is hereby imposed and shall be levied, collected and paid annually, at the rates specified in this section, upon and with respect to the entire net income as herein defined, except as hereinafter provided, from all property owned and from every business, trade, profession or occupation carried on in this state by natural persons not residents of the state." The tax shall first be levied and paid with respect to the calendar year 1919.

62 From here on the Act proceeds to specify its provisions in much detail. "In general," says Mr. Powell in his very recent work, Taxation of Corporations and Personal Income, "it may be said that the New York law has copied the Federal Income Tax Act, substituting 'taxpayer other than a resident' for 'non-resident alien' and 'January 1, 1919' for 'March 1, 1913.' The remedial procedure and method of collection in the New York Corporation Tax Law, Arts. 9 and *9a*, are substituted for the Federal procedure." * * *

Non-residents are not entitled to the personal exemption provided for residents, to wit, $1,000 for unmarried persons, and $2,000 for married persons and $200 for each dependent.

Residents are likewise entitled to certain deductions in computing net income, but non-residents are allowed such proportion of deduction as the main income arising from sources within the state bears to the total income. The method of apportionment and allocation of claimed deductions is to be determined by the State Comptroller.

The Act creates "withholding agents," and the complainant would be one under the definition of the term, and such agents are required "to deduct and withhold 2% from all salaries, wages, commissions, annuities, emoluments, and other fixed and determinable annual or periodical gains, profits and incomes of which he shall have control, receipt, custody, disposal or payment, if the amount paid or received in any year equals or exceeds $1,000, unless there shall be
62½ filed with the withholding agent before the time to return any payment a certificate * * * to the effect that the person entitled to such salary," etc., is a resident, and setting forth his residence in the state.

The complainant alleges the existence between it and its employees of term contracts and is so positioned generally as to come within the terms of this Act, and would, it says, be put to considerable expense in withholding a percentage of the salaries of its employees. The defendant as Comptroller is alleged to threaten to enforce the penalties of the statute against the complainant unless it complies with the terms of the statute. The jurisdictional allegations of the bill being sufficient, the complainant asks for equitable relief against the threatened action of the Comptroller upon the grounds:

(1) That the statute is illegal and unconstitutional, in that it is contrary to and in violation of Article I, Section 8, of the Constitution by interfering with and directly hindering commerce;

(2) That it impairs the obligation of contracts between the complainant and its employees;

(3) That it is contrary to Section 2 of Article IV of the Constitution, in that it deprives the citizens of the State of Connecticut and of New Jersey of the privileges and immunities enjoyed by citizens of the State of New York.

(4) That it contravenes the Fourteenth Amendment of the Federal Constitution, in that it abridges the privileges

63 and immunities of citizens of the United States residing in, and citizens of, Connecticut and New Jersey and states other than New York, and that the complainant and its employees are deprived of their property without due process of law, and that they are denied the equal protection of the laws.

KNOX, *D. J.*

By reason of the decision which I have determined should be made in this case, it will be unnecessary to enter upon a discussion of the enactment in its entirety. That a state possesses practically unlimited powers of taxation within the realm of its jurisdiction save as circumscribed by constitutional limitations, is elementary, and income taxes are no exception.

The outstanding question, it seems to me, in this litigation is whether the Act as drawn transgresses upon the equal privilege and immunity provisions of the Federal Constitution. If it does, I need proceed no further.

So far as decided cases upon this precise question go, there appear to be none.

It is true the question was raised in the Income Tax Cases of Wisconsin, 148 Wisconsin, 456, wherein Chief Justice Winslow said:

"It is argued that the provisions which deny to non-residents the exceptions which are allowed to residents * * * violate Section 2 of Article IV of the Federal Constitution, which provides that 'the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.' * * * We regard it as a question involved in considerable doubt, and one not necessary to be passed upon now."

The case of Shaffer v. Howard, 250 Federal, 873, by reason
64 of its facts, is but of little help in this instance, and it is necessary to consider more or less original sources, and resort is had to the case of Corfield v. Coryell, 4 Washington Circuit Court Reports, 381.

The accuracy of the language, and the authority of this case, so far as I know, have not been questioned, and Justice Washington there said that he had no hesitation in confining the expression, that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states" to those privileges and immunities which were in their nature fundamental, which belong of right to citizens of all free governments and which have at all times been enjoyed by the citizens of the several states which compose the Union from the time of their becoming free, independent and sovereign. Among these fundamental rights, said Justice Washington, were "the right of a citizen to pass through or to reside in any other state for the purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of *habeas corpus*; to take, hold and dispose of property, either real or personal, and an exemption from higher taxes or impositions than are paid by the other citizens of the state."

Thereafter, in Paul v. Virginia, 8 Wall., 168, at page 180, the Supreme Court said:—

"It was undoubtedly the object of the" (Constitutional) "clause in question to place the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned. It relieves them from the disabilities of alienage in other states; it inhibits discriminat-
65 ing legislation against them by other states; it gives them the right of free ingress into other states, and egress from them; it insures them in other states the same freedom possessed by the citizens of those states in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other states the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this."

Again, in Ward v. Maryland, 12 Wall., 418, the Court, in specifying some of the rights included within the words "privileges and immunities," said one of them was that a citizen of one state should be "* * * exempt from any higher taxes or excises than are imposed by the state upon its own citizens." See also, Cooley, Const. Limitations, 16. Subsequently in the Slaughter House Cases, 16 Wall., 36, it was said that the purpose of the Fourteenth Amendment "* * * was to declare to the several states, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction." Certainly the force of this pronouncement was not qualified by the vigor of the dissents in these cases; and also in Barbier v. Connolly, 113 U. S., 27, in a discussion of the Fourteenth Amendment somewhat similar language was used.

Then there may be found the cases of Blake v. McClung, 176 U. S., 59, followed by Sully v. American National Bank, 178 U. S., 289, wherein it was held that non-resident unsecured creditors stood upon the same footing with resident unsecured creditors, a statute of Tennessee to the contrary notwithstanding.

66 It need not be argued that the rights of a corporation created by one state within the borders of another state are not altogether similar to the rights of a natural person so circumstanced. Paul v. Virginia, supra; but even so, it was decided in Southern Railway v. Greene, 216 U. S., 400, that to tax a foreign corporation under the circumstances there present by a different and more onerous rule than was used in taxing domestic corporations for the same privilege, constituted a denial of the equal protection of the law.

In Wiley v. Parmer, 14 Ala., 627, it was held that the statute of that state, taxing the slaves of a non-resident at double the amount at which those of a resident were taxed, was unconstitutional.

In Bliss's petition, 63 N. H., 135, it was held that a state cannot refuse a pedler's license to a citizen of another state, asked for

upon the same terms that it grants licenses to its own citizens. Among other things the Court said:—

"The equality of privileges and immunities guaranteed by the federal constitution to the citizens of each state exempts them from any higher taxes than the state imposes upon her own citizens."

Other cases to the same general effect are, State v. Lancaster, 63 N. H., 267; McGuire v. Parker, 32 La. Ann., 832; Oliver v. Washington Mills, 11 Allen, 280; Town of Farmington v. Downing, 30 Atl. Rep., 345.

In Sprague v. Fletcher, 69 Vt., 69, it was declared that an act of Vermont which denied to non-residents of the state rights which are allowed to residents under the same circumstances, in re-
67 spect to deductions from taxable personal property by reason of debts owed by the taxpayers, conflicts with Article IV, Section 2, of the Federal Constitution, which secures to citizens of each state "all the privileges and immunities in the several states."

Tested by the standard of the principles set forth in the foregoing cases, does the failure to accord to non-residents of the state the exemptions and immunities provided for to residents make this law, or part of it, invalid?

It becomes necessary to determine what persons are meant by the term "non-residents." The Comptroller of the State has used this language in referring to the term: "A person is a non-resident within the meaning of the act, if he receives taxable incomes from property owned or from a business, trade, profession or occupation carried on in the state, but is not a resident thereof." What I have to say will be confined to such non-residents who are citizens of states other than New York.

The question is of importance to the State of New York and is likewise of importance to the thousands of persons, residents and citizens of adjoining states, who daily come into this state and here contribute to its welfare and prosperity.

It may be well to inquire what is the nature of the discrimination which it is alleged non-residents will be subjected to under the operation of the law. The following illustration will serve to answer the inquiry:

Two persons are employed in this State by the plaintiff.
68 Their work is in all respects similar, and each receives a salary of $2,000 per annum. Assume that each employee is married, one living with his wife in New York, the other living with his wife in Connecticut. Under the law as it is written the resident of New York would be exempt from taxation, but the resident of Connecticut would be subject to a tax of $20.

Section 366 provides that "exery withholding agent shall deduct and withhold two per centum from all salaries" etc., of non-residents. The tax imposed by Section 351 is at the rate of one per cent. on net incomes up to $10,000; this is obviously an error in the Act, and under the regulations withholding agents are required to withhold but one per cent. Without commenting upon the authority of the regulation so imposed, this discrepancy may be passed. The withholding of any sum from the salaries of non-residents is objected

to, inasmuch as there is no withholding from residents. Assuming the power to lay a tax upon non-residents based upon personal service, this feature of the Act I am inclined to think is not necessarily fatal to its validity. It is the law, I think, that not only must the final purpose of the law be considered, but the means of its administration—the ways it may be defeated. St. John v. New York, 201 U. S., 633. As to this feature of administration, I believe that some classification between residents and non-residents may with propriety be made. District of Columbia v. Brooke, 214 U. S., 138; Field v. Barber Asphalt Co., 194 U. S., 618. Reference may also be had to Bell's Gap Railroad Co. v. Pennsylvania, 134 U. S., 232, wherein the Court held that the deduction of a tax by a withholding agent is merely a matter of convenience adopted as a secure
69 method of collecting the tax, and as such is not objectionable.

As to the inconvenience resulting to the non-resident by reason of the payment by the withholding agent of the gross amount so withheld, and the trouble and expense of the taxpayer in recovering any excess over the tax finally determined upon, I need not now comment.

Paragraph 5 of Section 360 provides that a resident may deduct losses incurred in any transaction entered into for profit, though not connected with the trade or business, "but in the case of a taxpayer other than a resident of the state only as to such transaction within the state." The result of this is that two employees of complainant, each receiving a salary of $5,000 a year, may together enter into a business venture in another state; if the venture within a year results in a loss of say $5,000 to each, the resident of New York may deduct his loss and pay no tax, but the non-resident of New York is subject to the tax. Also under paragraph 6 a resident may deduct his losses from fires, but unless the property of a non-resident injured by fire is within this state he can make no deduction.

Theoretically, the first of the two last-mentioned discriminations may be justifiable upon the ground that as to a resident of New York the state is entitled to tax upon his gains and profits from sources without the state, whereas as to a non-resident the
70 tax may be recovered only as to net income from property, businesses and occupations within the State of New York. The fact, however, remains that it is the personal knowledge of us all that the only appreciable source of income of thousands of non-residents subject to this tax lies within the confines of this state, and that as a matter of practical operation of the statute the effect will be simply to deny to a non-resident, no matter what his misfortune, any exemptions. That there are in these provisions of the law a number of problems as to the character and place of income sought to be taxed well worthy of serious consideration, is undeniable; but in the aggregate, I am of opinion that as now framed the statute cannot operate without depriving citizens of other states of privileges and immunities which are open to citizens and residents of New York.

The difficulty here has arisen, it would appear, by the legislature having assumed that a citizen of the United States residing in a

state other than New York sustains to the taxing power of that state the same relationship that a non-resident alien sustains to the federal taxing power. There is, however, a distinction. Generally speaking, the United States Government, as suggested by Mr. Powell in his book "Taxation of Corporations and Personal Incomes," may prescribe terms under which aliens may do business here or prevent them from doing business here altogether. By the Fourteenth Amendment it is declared that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside"
71 and "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

It is this provision of the Constitution along with the 2d Section of Article IV and the Interstate Commerce Section of our fundamental law that have been largely responsible for the community of interest, the unanimity of purpose, the united effort, and the magnificent accomplishments of our poeple. If now, under one pretence or another, the states are to erect economic and taxation barriers along their boundaries, it is but a question of time when the citizens of the various states will for all practical purposes be burdened with the disabilities of alienage, and this would be intolerable.

For these reasons, I am constrained to hold that the provisions of Chapter 627 of the Laws of the State of New York for the year 1919 are, in so far as they attempt to assess, lay and collect a tax upon citizens of the United States who are not residents of the State of New York, and who are citizens of other states, without according them the privileges and immunities afforded by said Act to citizens of the United States who are citizens of the State of New York and resident therein, are unconstitutional and void. Nothing herein, however, is meant to be decided as to the validity of the statute so far as it relates to residents of the State of New York.

Neither that question nor the question as to the power of the state to lay a tax upon non-resident citizens of another state based upon their earnings in this state for personal service rendered
72 need, in view of the basis of my decision, now be considered.

The motion will be denied.

August 6, 1919.

(Sgd.) JNO. C. KNOX
U. S. District Judge.

73 & 74 *Copy.*

At a Stated Term of the District Court of the United States for the Southern District of New York, Held at the United States Court House and Post Office Building, in the Borough of Manhattan and City of New York, in said District, on the 13th Day of August, 1919.

Present: Hon. John C. Knox, District Judge.

In Equity. 16-153.

The Yale & Towne Manufacturing Company, Complainant,

vs.

Eugene M. Travis, as Comptroller of the State of New York, Defendant.

The motion of the defendant to dismiss the Bill of Complaint herein coming on to be heard, and after hearing Counsel for the respective parties hereto, it is

Ordered that said motion be and the same is hereby denied with leave to defendant to answer the Bill of Complaint herein within twenty days from the date hereof.

JNO. C. KNOX,
United States District Judge.

75 [Endorsed:] 15197. 53/191. In Equity 16-153. United States District Court, Southern District of New York. The Yale & Towne Manufacturing Company, Complainant, vs. Eugene M. Travis, as Comptroller of the State of New York, Defendant, Order denying motion to dismiss bill. Archibald Cox, Compl't's Solct., 233 Broadway, New York City. Entered in docket, Aug. 11, 1919. Filed Aug. 13, 1919.

76 District Court of the United States for the Southern District of New York.

THE YALE & TOWNE MANUFACTURING COMPANY, Complainant,

vs.

EUGENE M. TRAVIS, as Comptroller of the State of New York, Defendant.

The Answer of Eugene M. Travis, Comptroller of the State of New York, the Above-named Defendant, to the Bill of Complaint Herein.

1. Defendant denies each and every allegation of paragraph "10" of the bill of complaint and prays that the bill of complaint be dismissed with costs.

EUGENE M. TRAVIS,
Comptroller of the State of New York.

Charles D. Newton, Attorney General of the State of New York and Solicitor for Defendant, Capitol, Albany, N. Y.

STATE OF NEW YORK,
City and County of Albany, ss:

Eugene M. Travis, being duly sworn, says: I am the Comptroller of the State of New York and the defendant herein, and the foregoing answer is true to the best of my knowledge, information
77 and belief.

EUGENE M. TRAVIS.

Sworn to before me this 11th day of August, 1919.
[NOTARY'S SEAL.] J. S. Y. IVINS,
Notary Public, Albany County, N. Y.

78 [Endorsed:] District Court of the U. S. Supreme Court Southern District of New York. The Yale & Towne Manufacturing Company, Complainant, vs. Eugene M. Travis, Comptroller of the State of New York, Defendant. Copy. Answer. Charles D. Newton, Attorney-General, Attorney for Defendant Capitol, Albany, N. Y. Filed Aug. 13, 1919.

79 & 80 United States District Court, Southern District of New York.

THE YALE & TOWNE MANUFACTURING COMPANY, Complainant,

against

EUGENE M. TRAVIS, as Comptroller of the State of New York, Defendant.

Memorandum.

This is the final hearing on bill and answer raising only issues of law and no issues of fact. The motion to dismiss the bill brought up the constitutionality of the enactment in the particulars attacked. In denying the motion to dismiss the bill, Judge Knox wrote a comprehensive opinion, the result of which was to find the statute unconstitutional in certain respects. The present hearing does not present any new matter and, in accordance with well settled practice, final decree will be in accord with the opinion and decision of Judge Knox.

The final decree is signed herewith.

JULIUS M. MAYER,
District Judge.

September 8, 1919.

81 At a Stated Term of the District Court of the United States for the Southern District of New York, held at Room 1, Woolworth Building, in the Borough of Manhattan in the City of New York, in said District, on the 8th day of September, 1919.

Present: Hon. Julius M. Mayer, Judge.

In Equity. 16-153.

THE YALE & TOWNE MANUFACTURING COMPANY, Complainant,

vs.

EUGENE M. TRAVIS, as Comptroller of the State of New York, Defendant.

This cause having come on to be heard at final hearing at this term, was argued by counsel; and thereupon upon consideration of, it is—

Ordered, adjudged and decreed that an injunction issue herein perpetually enjoining the defendant, Eugene M. Travis, as comptroller of the State of New York, his agents and all persons acting under his instructions from requiring the complainant, The Yale & Towne Manufacturing Company, to deduct or withhold from the salaries, wages or other fixed determinable annual or periodical compensation earned by its employees, residing in the State of Connecticut or any State other than the State of New York and engaged

81½ wholly or partly in the performance of service in the State of New York, any income tax claimed to be due from such employees to the State of New York on account of said services under the statute entitled "Chapter 627 of the laws of 1919" enacted by the Legislature of the State of New York and approved by the Governor of said State, May 14, 1919; and from requiring the complainant under said statute to make any return to the defendant of information concerning the amount of salaries, wages or other fixed or determinable gains or income paid by it to any of its said employees engaged wholly or in part in rendering service in the State of New York and residing outside of the State of New York and from requiring the complainant to pay as a tax due from said non-residents or any of them under said statute, any sum whatsoever; and from instituting any proceedings against the complainant because of its failure to make, sign or verify a return of salaries, wages or other income paid by it to said non-residents or any of them, as required by the provisions of said statute; and from instituting any proceedings against the complainant for the recovery of penalties or otherwise for its failure to withhold from the wages, salaries or other income due to its said non-resident employees as required by said statute or for the failure of the complainant to make and file a return thereof to the defendant or to pay the amount thereof as by said statute required.

JULIUS M. MAYER,
United States District Judge.

[Endorsed:] In Equity, 16-153. United States District Court Southern District of New York. The Yale & Towne Manufacturing Company, Complainant, v. Eugene M. Travis, as comptroller of the State of New York, Defendant. Final Decree. Archibald Cox, Compl't's Solct. Filed Sept. 8, 1919.

82 District Court of the United States, Southern District of New York.

The Yale & Towne Manufacturing Company,
Complainant-Appellee,

against

Eugene M. Travis, as Comptroller of the State of New York,
Defendant-Appellant.

And now comes Eugene M. Travis, defendant-appellant herein, and assigns the following error, namely: that the United States District Court for the Southern District of New York erred in granting the injunction contained in the decree dated September 8, 1919.

Wherefore, the defendant prays that the said decree be reversed and the District Court directed to dismiss the bill.

CHARLES D. NEWTON,
Attorney General of the State of New York, Solicitor for Defendant-Appellant, Capitol, Albany, N. Y.

83 [Endorsed:] District Court of the U. S. Supreme Court, Southern District of New York. The Yale & Towne Mfg. Co., complainant-appellee, vs. Eugene M. Travis, as Comptroller of the State of New York, defendant-appellant. Copy. Assignment of Error. Charles D. Newton, Attorney-General, attorney for defendant. Capitol, Albany, N. Y. Filed Sept. 8, 1919.

84 District Court of the United States, Southern District of New York.

THE YALE & TOWNE MANUFACTURING COMPANY, Complainant-Appellee,

against

EUGENE M. TRAVIS, as Comptroller of the State of New York, Defendant-Appellant.

The above named defendant, Eugene M. Travis, conceiving himself aggrieved by the final decree made and entered in the above entitled cause and dated on the 8th day of September, 1919, does hereby appeal from said decree to the Supreme Court of the United States, and he prays that this his appeal may be allowed and that a transcript of the record of proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States. Albany, N. Y., September 8, 1919.

CHARLES D. NEWTON,
Attorney General of the State of New York and Solicitor for Defendant-Appellant, Capitol, Albany, N. Y.

The foregoing appeal is hereby allowed this 8th day of September, 1919.

JULIUS M. MAYER,
U. S. District Judge for the Southern District of New York.

Citation & Security for costs is waived.
Sept. 8, 1919.

ARCHIBALD COX,
Solicitor for Complainant.

85 [Endorsed:] District Court of the U. S., for the Southern District of New York. The Yale & Towne Mfg. Co., complainant-appellee, vs. Eugene M. Travis, as Comptroller of the State of New York, defendant-appellant. Original. Petition for Appeal. Charles D. Newton, Attorney-General, attorney for defendant. Capitol, Albany, N. Y. Filed Sept. 8, 1919.

86 *Stipulation on Appeal Record.*

United States District Court, Southern District of New York.

E. 16-153.

THE YALE & TOWNE MANUFACTURING COMPANY, Complainant,

vs.

EUGENE M. TRAVIS, Comptroller of the State of New York, Defendant.

It is hereby stipulated and agreed, that the foregoing is a tr transcript of the record of the said District Court in the abo entitled matter as agreed on by the parties.

Dated Sept. 8, 1919.

ARCHIBALD COX,
Attorney for Plaintiff.

CHARLES D. NEWTON, V. S. Y. I.,
Attorney for Defendant.

87 UNITED STATES OF AMERICA,
Southern District of New York, ss:

E. 16-153.

THE YALE & TOWNE MANUFACTURING COMPANY, Complainant,

vs.

EUGENE M. TRAVIS, Comptroller of the State of New York, Defendant.

I, Alexander Gilchrist, Jr., Clerk of the District Court of th United States of America for the Southern District of New York, d hereby Certify that the foregoing is a correct transcript of the recor of the said District Court in the above-entitled matter as agreed o by the parties.

In testimony whereof, I have caused the seal of the said Court t be hereunto affixed, at the City of New York, in the Southern Distri of New York, this 8th day of September in the year of our Lo one thousand nine hundred and nineteen and of the Independen of the said United States the one hundred and forty-fourth.

[Seal District Court of the United States, Southern Distri of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk.

Endorsed on cover: File No. 27,303. S. New York D. C. U. S Term No. 548. Eugene M. Travis, as Comptroller of the State o New York, appellant, vs. The Yale & Towne Manufacturing Com pany. Filed September 19th, 1919. File No. 27,303.

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Supreme Court of the United States

October Term 1919

No. 548

EUGENE M. TRAVIS, as Comptroller of the State of New York,
Appellant,

vs.

YALE & TOWNE MANUFACTURING CO.,
Appellee.

MOTION TO ADVANCE

CHARLES D. NEWTON,
Attorney-General of New York,
Solicitor for Appellant.

E. C. AIKEN,
Deputy Attorney-General of Counsel

ARCHIBALD COX,
Solicitor for Appellee.

SUPREME COURT OF THE UNITED STATES

EUGENE M. TRAVIS, as Comptroller of the STATE OF NEW YORK,
Appellant,

against

YALE & TOWNE MANUFACTURING CO.,
Appellee.

To the Honorable Justices of this Court:

Now comes the Appellant herein and respectfully shows:

This is a case within the provisions of section 949 of the Revised Statutes, the enforcement of a revenue law of the State of New York having been stayed through the allowance against your petitioner of a perpetual injunction, restraining him as the collecting officer of the State from enforcing chapter 627 of the Laws of 1919 of New York, which is the New York Income Tax Law.

The District Court for the Southern District of New York held, in an opinion by Judge Knox, that this statute improperly discriminates between residents and nonresidents of the State, in violation of Article IV of the Federal Constitution and the Fourteenth Amendment, and is unconstitutional and void insofar as it affects nonresidents of the State.

Your petitioner has appealed to this court.

There are probably five hundred thousand persons who derive income from sources within the State of New York, and their taxability under this statute depends upon the decision of this Court in this suit. It is highly important to them that a prompt decision be made, and it is also highly important to the State, for if the act cannot be enforced it will make a difference of millions of dollars to the treasury of the State and the Legislature should know as soon as possible after it convenes in January, 1920, what must be done, if anything, to provide for the situation.

Wherefore, your petitioner, as the party claiming under the revenue laws of a state, the execution whereof is enjoined, respectfully moves that this case be advanced upon the calendar and that the Court set a day upon which argument will be heard.

The case of *Shaffer* v. *Carter* (No. 531), testing the constitutionality of the Oklahoma Income Tax Law is upon the calendar of this Court at this term, and a motion to advance its position has been made. It involves many of the questions raised in the instant case, and it is respectfully suggested that this case be set for argument at the same time therewith or at a time shortly thereafter, so that both cases may be heard before either is decided.

Dated Albany, N. Y., October 7, 1919.

CHARLES D. NEWTON,
Attorney-General of New York.
Solicitor for Appellant

The appellee joins in the foregoing application

ARCHIBALD COX,
Solicitor for Appellee.